

12-5-2012

Shinn v. Board of County Commissioners Clerk's Record v. 1 Dckt. 40436

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In the
SUPREME COURT
of the
STATE OF IDAHO

EDWARD L. SHINN and DONILEE E. SHINN, husband and wife,

Petitioners-Appellants,

v.

**BOARD OF COUNTY COMMISSIONERS OF CLEARWATER COUNTY,
IDAHO**

Respondents-Respondents.

Appealed from the District Court of the Second
Judicial District of the State of Idaho, in and
for Clearwater County

Honorable MICHAEL J. GRIFFIN, District Judge

Gary W. Jones
Attorney for Petitioners-Appellants

E. Clayne Tyler
Attorney for Respondents-Respondents

Edward L Shinn, etal. vs. Board Of County Commissioners Of Clearwater County

Edward L Shinn, Donilee E Shinn vs. Board Of County Commissioners Of Clearwater County

Date	Code	User	Judge
12/19/2011	NCOC	NJOHNSTUN	New Case Filed - Other Claims Michael J Griffin
		NJOHNSTUN	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Jones, Brower & Callery Receipt number: 0004167 Dated: 12/19/2011 Amount: \$88.00 (Check) For: Shinn, Donile e (plaintiff) and Shinn, Edward L (plaintiff) Michael J Griffin
	PETN	NJOHNSTUN	Petition For Judicial Review Michael J Griffin
	APER	NJOHNSTUN	Plaintiff: Shinn, Edward L Appearance Garry W Jones Michael J Griffin
2/17/2012	CERS	HOLLIBAUGH	Certification of Record Michael J Griffin
	LDGD	HOLLIBAUGH	Lodging of Administrative Record Michael J Griffin
4/27/2012	ORDR	CHRISTY	Order for Briefing Michael J Griffin
4/30/2012	NOTC	HOLLIBAUGH	Notice of Filing of Record of Proceedings Michael J Griffin
5/22/2012	MEMO	BARBIE	Memorandum of Law in Support of Petition for Judicial Review Michael J Griffin
7/2/2012	MOTN	KBROWNING	Motion To Augment Administrative Record Michael J Griffin
7/3/2012	BREF	BARBIE	Respondent's Reply Brief Michael J Griffin
7/13/2012	HRSC	CHRISTY	Hearing Scheduled (Oral Arguments 08/28/2012 03:30 PM) Michael J Griffin
		CHRISTY	Notice Of Hearing Michael J Griffin
7/16/2012	BREF	CHRISTY	Petitioner's Reply Brief Michael J Griffin
	APER	CHRISTY	Plaintiff: Shinn, Edward L Appearance Karin Seubert Michael J Griffin
7/17/2012	NOTC	CHRISTY	Notice of Association Michael J Griffin
	NOHG	KBROWNING	Notice Of Hearing: Motion to Augment Administrative Record Michael J Griffin
	HRSC	CHRISTY	Hearing Scheduled (Motion 08/07/2012 10:00 AM) to Augment Record Michael J Griffin
8/1/2012	STIP	CHRISTY	Stipulation To Augment Record Michael J Griffin
	HRVC	CHRISTY	Hearing result for Motion scheduled on 08/07/2012 10:00 AM: Hearing Vacated to Augment Record Michael J Griffin
8/28/2012	HRHD	CHRISTY	Hearing result for Oral Arguments scheduled on 08/28/2012 03:30 PM: Hearing Held Michael J Griffin
	DCHH	CHRISTY	Hearing result for Oral Arguments scheduled on 08/28/2012 03:30 PM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 Michael J Griffin
	CMIN	CHRISTY	Hearing result for Oral Arguments scheduled on 08/28/2012 03:30 PM: Court Minutes Michael J Griffin
9/11/2012	FIND	CHRISTY	Findings And Conclusions Michael J Griffin

Edward L Shinn, Donilee E Shinn vs. Board Of County Commissioners Of Clearwater County

Date	Code	User		Judge
9/11/2012	SCAN	CHRISTY	Scanned:11-15-2012	Michael J Griffin
	JDMT	CHRISTY	Judgment	Michael J Griffin
	SCAN	CHRISTY	Scanned:9-20-12	Michael J Griffin
	CDIS	CHRISTY	Civil Disposition entered for: Board Of County Commissioners Of Clearwater County, Defendant; Shinn, Donilee E, Plaintiff; Shinn, Edward L, Plaintiff. Filing date: 9/11/2012	Michael J Griffin
	CACL	CHRISTY	Case Status CLOSED	Michael J Griffin
10/18/2012		CBAKER	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Seubert, Karin (attorney for Shinn, Edward L) Receipt number: 0003317 Dated: 10/18/2012 Amount: \$109.00 (Cashiers Check) For: Shinn, Donilee E (plaintiff) and Shinn, Edward L (plaintiff)	Michael J Griffin
	BNDC	CBAKER	Bond Posted - Cash (Receipt 3318 Dated 10/18/2012 for 386.75) Clerks Record	Michael J Griffin
	BNDC	CBAKER	Bond Posted - Cash (Receipt 3319 Dated 10/18/2012 for 92.00) Transcript	Michael J Griffin
	BNDC	CBAKER	Bond Posted - Cash (Receipt 3320 Dated 10/18/2012 for 8.00) Transcript	Michael J Griffin
	NOTA	BARBIE	NOTICE OF APPEAL	Michael J Griffin
10/29/2012	CCOA	BARBIE	Clerk's Certificate Of Appeal Filed With The Supreme Court	Michael J Griffin
	ORDR	BARBIE	Order RE: Amended Notice Of Appeal From The Supreme Court	Michael J Griffin
11/8/2012	NOTA	BARBIE	AMENDED NOTICE OF APPEAL	Michael J Griffin
11/26/2012		BARBIE	Miscellaneous Payment: Fax Fee Paid by: Jones, Brower & Callery Receipt number: 0003679 Dated: 11/26/2012 Amount: \$4.00 (Cashiers Check)	Michael J Griffin
11/29/2012	NLT	BARBIE	Notice Of Lodging Transcript On Appeal	Michael J Griffin
12/5/2012	CERT	BARBIE	Clerk's Certificate Of Exhibits	Michael J Griffin
	CERT	BARBIE	Certificate To Record	Michael J Griffin
	CERT	BARBIE	Certificate Of Service	Michael J Griffin

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CARRIE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

2011 DEC 19 AM 11 39

CASE NO. CV2011-500

BY my DEPUTY ✓

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)
ZV2011-2)

EDWARD L. SHINN and)
DONILEE E. SHINN, husband and wife,)
Petitioners,)

BOARD OF COUNTY COMMISSIONERS))
OF CLEARWATER COUNTY, IDAHO,)
Respondent.)

CASE NO. CV2011-500

PETITION FOR JUDICIAL REVIEW

Fee Category: _____

Fee: \$88.00

COMES NOW EDWARD L. SHINN and DONILEE SHINN, husband and wife, petitioners, by and through GARRY W. JONES, their attorney of record, and petition this court for judicial review pursuant Idaho Administrative Procedures Act and specifically, Idaho Code Section 67-5270 et seq., and Rule 84 of the Idaho Rules of Civil Procedure, of the decision of the Board of County Commissioners, Clearwater County, Idaho, denying petitioners appeal of Variance ZV2011-2 authorized by the Clearwater County Planning and Zoning Commission in said matter, in their decision dated November 21, 2011, and support thereof states the following:

1. Petitioners, EDWARD L. SHINN and DONILEE SHINN, husband and wife, are the petitioners herein and the owners of the following described real property located in Clearwater County, Idaho, to-wit:

Township 37 North Range 1 East Boise Meridian

Section 16: NW1/4

Section 17: N1/2 NE1/4, SE1/4 NE ¼

2. The real property owned by Shinns and described in paragraph 1 is adjacent to certain real property owned by Edward Galloway and Carole Galloway, in Clearwater County, and the subject of Subdivision Request SUB060096.

3. Access from public right of way (Middle Road), to the real property Galloways are attempting to subdivide is a 30 foot easement from said Middle Road over and across real property owned by Shinn to the Galloway property. In order to obtain approval of their requested subdivision, the Galloways have requested variances relating to the 30 foot easement, which variances are herein set forth in full.

4. Shinn's have disputed, for a variety of reasons as set forth hereinafter, that such easement is adequate under the Clearwater County Subdivision Ordinance to provide such access as required by subdivision ordinance.

5. The variance request process culminated in the Clearwater County Board of Commissioners denying on November 21, 2011, the appeal of the Petitioners of their appeal of the Clearwater County Planning and Zoning Commission's granting of all variances requested by Galloway.

6. Petitioners, EDWARD L. SHINN and DONILEE SHINN seek judicial review of the Clearwater County Board of Commissioners decision on appeal of Edward and Carol Galloway's variances, ZV2001-2.

7. Procedurally, the chronological order of Galloway's attempts to meet the Clearwater County's subdivision ordinance by the use of the Shinn easement is as follows:

A) November 20, 2006 - the preliminary plat in Clearwater County Subdivision Ordinance Request SUB060096 submitted by Edward and Carole Galloway is approved as to the preliminary plat. No final decision is reached on roads outside the proposed subdivision.

B) November 17, 2008 – hearing is held on approval for final plat approval on the Galloway subdivision. No decision is reached as various issues regarding access from public road to the Galloway subdivision remain unanswered.

C) March 21, 2011 – hearing held at Clearwater Planning and Zoning Commission on Variance ZV2011-2 filed by Edward and Carole Galloway requesting variances of access road specifications under Article 4 of the Clearwater County Subdivision ordinance as follows:

1. Change right of way width from 60 feet to as required by the subdivision ordinance down to 30 feet and then down to 15 feet at the actual property line.

2. Change surface of finished width from 24 feet as required by Subdivision Ordinance to 18 feet, then down to 15 feet at the actual property line.

3. Set aside requirement to dedicate the access road to public use as required by the subdivision ordinance.

At said meeting and after public testimony, the Clearwater County Planning and Zoning Commission granted the variance requests of Galloways. Said public hearing was recorded, the recording of which is in possession of the clerk of the Clearwater County Planning and Zoning Commission. The written decision granting such variances was dated April 4, 2011.

4. Appeal was timely filed by Shinn on the granting of the variances on the following grounds:

a. No facts were presented which would justify the issuance of a variance under the regulations and conditions of the Clearwater County Subdivision Ordinance.

b. Easement by which the Galloways propose to use for access to their property does not allow that the road be utilized for easement for ingress and egress by parties other than the Galloways.

c. That it is not proper for a variance to be granted from the requirement that access to the subdivision be dedicated to the public.

D) May 23, 2011 - argument was heard on the Shinn appeal.

E) July 29, 2011 – the Clearwater County Board of Commissioners remanded the variance request of the Galloways to the Clearwater Planning and Zoning Commission, with specific instructions to review and identify the facts of an undue hardship which would justify the granting the variances.

F) August 15, 2011 – a further hearing was held by the Clearwater County Planning and Zoning Commission on the variance at the request of Galloways. Said public hearing was recorded, the recording of which is in possession of the clerk of the

Clearwater County Planning and Zoning Commission. At such hearing, it was determined that facts were sufficient for the granting of a subdivision ordinance on the basis of undue hardship and the variances were granted.

G) August 31, 2011 – Shinn filed their appeal of the Planning and Zoning decision. The grounds for appeal were:

a) Insufficient evidence presented to authorize the Commission to enter findings regarding hardship.

b) Any hardship as presented by Mr. Galloway were of their own making in that when they purchased the property, there was no access to the property. The present 60 foot requirement for right of way access and 24 foot requirement for surfaced areas were in the subdivision ordinance at the time the Galloways purchased their property.

c) That the easement that the Galloways used does not allow the road to be utilized for ingress and egress by parties other than the Galloways.

d) That there is no justification for a variance to be granted from the subdivision requirement that access to the subdivision be dedicated for public use.

H) October 3, 2011 – Shinns' appeal heard before Clearwater County Board of Commissioners. Said public hearing was recorded, the recording of which is in possession of the clerk of the Clearwater County Planning and Zoning Commission.

I) November 21, 2011 – the Clearwater County Board of Commissioners denied the appeal of the Shinns and granted the variance of the Galloways. A copy of their decision is attached hereto as Exhibit A.

J) December 5, 2011 – Hearing on approval of the Galloways final plat was approved. Written decision has not been issued.

8. This petition is brought pursuant to the Idaho Local Planning Act and the Idaho Administrative Procedures Act. Transcripts of the hearing held on March 21, 2001 and August 15, 2011, have previously been prepared and are part of the Clearwater County Planning and Zoning/County Board of Commissioners record. A transcript of the hearing held before Clearwater County Board of Commissioners on October 3, 2011, has not been prepared and has been requested.

9. That the clerk of the Clearwater County Commissions should prepare the record of the Administrative Hearing before the County Commissioners.

10. That the issues on appeal are identical to those presented to the Clearwater County Board of Commissioners, to-wit:

a. No facts were presented which would justify the issuance of a variance under the regulations and conditions of the Clearwater County Subdivision Ordinance.

b. Easement by which the Galloways propose to use for access to their property does not allow that the road be utilized for easement for ingress and egress by parties other than the Galloways.

c. That it is not proper for a variance to be granted from the requirement that access to the subdivision be dedicated to the public.

d) That there is no justification for a variance to be granted from the subdivision requirement that access to the subdivision be dedicated for public use.

Additional grounds for review may be requested upon review of the complete transcript and record.

11. This petition also requests leave to present additional evidence, documentary and testimonial that will assist the court in its review of the decision of the County Commissioners, pursuant to Idaho Code section 67-5276.

12. The Clearwater County Commissioners decision is denying the appeal of the Shinns is not supported by substantial evidence, is arbitrary and capricious, and an abuse of discretion, and is in violation of the constitutional and statutory provisions, all contrary to Idaho Code Section 67-5279. Petitioners are entitled to an order of the court reversing the decision of the Clearwater County Board of Commissioners approving Subdivision Variances to the County with directions to deny the variances requested by Galloways.

13. Petitioner has retained the services of Garry W. Jones, attorney at law, and has incurred attorney fees and costs of representation in this matter and is entitled to award of attorney fees pursuant to Idaho Code sections 12-117, 12-120, 12-121.

14. All hearings took place in Clearwater County, Idaho, and Clearwater County is the proper venue for the filing of this present petition.

15. The petitioners have exhausted all administrative appeals.

16. This petition is timely filed.

17. That the undersigned, as attorney of record for the petitioners, hereby certifies:

A. That service of a copy of this petition has been made upon the Clearwater County Board of Commissioners.

B. That request has been made upon the Clerk of the Clearwater County Board of Commissioners for the estimated fee of the preparation of the transcript. Such estimate was not available at the time of signing of this petition. Petitioners are prepared to pay the estimated fee of transcript upon receiving the estimated cost.

C. That request has been made upon the Clerk of the Clearwater County Board of Commissioners for the estimated fee of the preparation of the record. Such estimate was not available at the time of signing of this petition. Petitioners are prepared to pay the estimated fee of record upon receiving the estimated cost.

WHEREFORE, petitioners pray for relief as follows:

1. For an order declaring that the approval of variances requested by Edward E. Galloway and Carole Galloway as ZV2011-2 should be set aside and that said variances be denied. At such time as the variances are denied, the request of the Galloways for the Subdivision Request SUB060096 cannot be sustained and should also be denied.
2. For an order that the transcript of hearings and administrative record should be prepared.
3. That the petitioner be awarded costs and attorney fees incurred incurred in pursuant this matter.
4. For such other further relief as may be deemed appropriate by the court.

DATED this 19th day of December, 2011.

JONES, BROWER & CALLERY, P.L.L.C.

Attorneys for Petitioners



GARRY W. JONES

**DECISION BY:
CLEARWATER COUNTY BOARD OF COMMISSIONERS
ON THE
APPEAL OF EDWARD and CAROLE GALLOWAY VARIANCES
(ZV2011-2)**

COMES NOW the Clearwater County Board of Commissioners (hereinafter "Board"), sitting as a quasi appellate board to hear the appeal of the decision from the Clearwater County Planning and Zoning Commission (hereinafter "Commission"), and makes the following findings and enters the following written order:

This decision relates only to the request for variance filed as ZV2011-2 in the records of Clearwater County, Idaho. The written recommendations of the Planning and Zoning Commission to the Board of County Commissioners relating to the subdivision plat filed as SUB 060096 do not constitute a final decision, but are recommendations only at this juncture, therefore are not ripe for appeal at this time.

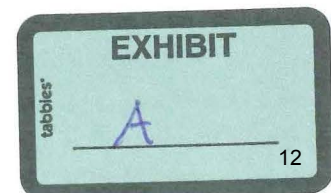
PRIOR PROCEEDINGS:

On May 23, 2006, Ed and Carole Galloway, (hereinafter Galloway), filed an application to subdivide a parcel of property approximately 99.82 acres (100 acre aliquot part parcel) into 10 parcels ranging between 6 plus acres and 12 plus acres in size. The applicants utilized the Class B combined plat procedure identified in the Clearwater County Subdivision Ordinance. The subdivision was eventually identified as Southfork Estates.

Galloway, on January 11, 2011, filed an application for three variances from the Clearwater County Subdivision Ordinance. Galloway sought to vary the requirement of Clearwater County Subdivision Ordinance Article 4.D.2 which requires access roads to be built within a minimum 60 foot wide right of way, to vary the requirements of Clearwater County Subdivision Ordinance Article 4.D.4.d. which requires access roads to have a minimum twenty four (24) foot road surface or finished width; and to vary the requirement of Article 4 Section B of the Clearwater County Subdivision Ordinance which requires all arterial, collector, and other streets in a proposed subdivision to be dedicated to the public.

The Commission, following a public hearing held on March 21, 2011, granted Galloway each of the requested variances, and entered a written findings of fact and conclusions of law, dated April 4, 2011. On March 25, 2011, Shinn filed a notice of appeal, stating as grounds for appeal that:

"No facts or testimony were presented which would authorize the issuances of a variance under the terms and conditions of the Clearwater County Subdivision Ordinance. Further, that the easement which the Galloways propose to use for access to the property



does not allow that road to be utilized for easement for ingress and egress for parties other than Mr. And Mrs. Galloway. Finally, that it is not appropriate for a variance to be granted from the requirement that access to the subdivision be dedicated for public use.”.

The Clearwater County Commissioners, sitting as a quasi appellate board, heard the appeal and issued an order remanding the matter to the Planning and Zoning Commission for further findings. As guidance, the Board requests the Commission consider the following:

1. Are there special circumstances or conditions affecting the property that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable, and
2. Are those special circumstances such that failure to grant a variance would cause an undue hardship to the developer, and
3. Would strict compliance with the requirements of the Ordinance result in inhibiting the achievement of the objectives of the Ordinance, or nullify the purpose of the Ordinance or the Comprehensive Plan.

The Commission held a subsequent hearing on August 15, 2011, and granted the requested variances a second time, pursuant to a written decision dated Sept. 6, 2011 (Appellate Record Section 15).

Appellants filed a second notice of appeal dated August 31, 2011, (Appellate Record Section 1), appealing the decision of the Commission to the Board of County Commissioners. As grounds for appeal, the appellants argue:

1. The applicant, Galloway, presented insufficient evidence to authorize the issuance of a variance.
2. Any undue hardship were of Galloway’s own making in that the property was purchased in 1985, when the existing standards were in place, and hardship of the applicant’s own making cannot be the grounds for the granting of a variance.

A third issue raised in the appellant’s first notice of appeal, that the access easement itself does not allow for subdivision of the Galloway property at all, which was held by the Board of County Commissioners pending remand to the Commission, is finalized herein as well. Appellants further re-assert as grounds for appeal that it is not appropriate for a variance to be granted from the requirement that the access road be dedicated for public use.

LAW / STANDARD OF REVIEW:

The legal authority under State statute, and County ordinance authorizing the ability to grant a variance to an subdivision applicant, and the terms required for granting such a variance,

are set forth in the Board of County Commissioners order dated July 29, 2011, and are adopted herein by reference.

In that the Board is sitting as an appellate board, guidance is found in Idaho Code Section 67-5279, applying to a Court review of a planning and zoning decision, as to the standard of review to apply:

- (1) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.
- (2) When the agency was not required by the provisions of this chapter or by other provisions of law to base its action exclusively on a record, the court shall affirm the agency action unless the court finds that the action was:
- (a) in violation of constitutional or statutory provisions;
 - (b) in excess of the statutory authority of the agency;
 - (c) made upon unlawful procedure; or
 - (d) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

- (3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:
- (a) in violation of constitutional or statutory provisions;
 - (b) in excess of the statutory authority of the agency;
 - (c) made upon unlawful procedure;
 - (d) not supported by substantial evidence on the record as a whole; or
 - (e) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

- (4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.

I. DID THE APPLICANT, GALLOWAY, PRESENT SUFFICIENT EVIDENCE TO AUTHORIZE THE ISSUANCE OF THE REQUESTED VARIANCES.

The Planning and Zoning Commission found, pursuant to the order dated April 4, 2011, and the order dated September 6, 2011, that Galloway had presented sufficient evidence to authorize the issuance of the requested variances.

To uphold the Commission's findings, the Board must consider, in light of the standard of review identified above, Article VIII of the Clearwater County Subdivision Ordinance which provides the standards for granting a variance, namely: 1. Whether an undue hardship would result from strict compliance with the ordinance; 2. Whether there are special circumstances or conditions making strict application of the ordinance impracticable or unreasonable; 3. Whether the purpose or intent of the ordinance would be nullified, or inhibited, if the variance was

granted; and 4. Whether the granting of the variance would be detrimental to the public welfare or injurious to other property in the area, or a violation of Idaho Code.

The requirement to show an "undue hardship" exists in State statute as well (I.C. 67-5279). There exists limited guidance from state of Idaho statutes or case law as to what constitutes an "undue hardship". Undue hardship is some condition which is analyzed on a case by case basis (*Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009) due to characteristics of the site (*Wohrle* at 147 Idaho 273-274; 207 P.3d 1004-05), or due to special circumstances or conditions, which are peculiar to the property and not applicable generally to land or buildings in the neighborhood (*Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 909, 693 P.2d 1108, 1111 (Idaho App., 1984), and which is not in conflict with the public interest. I.C. § 67-5279.

An undue hardship can be created due to exorbitant expense of a requirement not justified by the development, such as with respect to excessive road construction requirements to support a relatively few number of daily vehicle trips caused by the development (see *Blaha v. Board of Ada County Com'rs*, 134 Idaho 770, 773, 9 P.3d 1236, 1239 (Idaho 2000) for a Board of County Commissioners finding of undue hardship due to an expense vs. benefit analysis, cited with approval by the reviewing court).

In this case, evidence to the Commission found the road as varied provided proper, safe access, that the easement necessary to support the road as varied was adequate, that obtaining a wider easement to comply with the ordinance was impossible, that dedicating that easement to the public was impossible due to the nature of the easement, and unnecessary in that there would likely be no further developments or subdivisions using the same road for access, and that the cost of construction, even if it were possible, to build a road which complied with the ordinance was unduly exorbitant, especially in light of the 10 to 20 vehicle trips per day which is all that is anticipated for this low density very rural development at maximum housing capacity. The road as varied (easement, road width, public dedication) was deemed adequate by reviewing professionals including the Clearwater County Road Department and the Evergreen Fire District.

Failure to grant the requested variances would have the result in the inability to subdivide the real property into less than 20 acre parcels, without any control or jurisdiction over the road at all by Clearwater County, and with the possibility of more residences being in place and a higher traffic load than as currently proposed, due to the lack of controlling ordinances being in place for 20 acre or larger parcels. Thus, the public interest may actually be hurt by failure to grant the variances.

Further, Galloway provided a letter which was read into the record. The letter references each of the requirements for granting a variance and provides grounds for finding in his favor on each of those requirements. The Clearwater County Planning and Zoning Administrator also prepared and submitted staff recommendations identifying the required findings, and addressing them, with a recommendation to grant the requested variances.

In prior proceedings, testimony was submitted from the Clearwater County Road and Bridge Department Supervisor, Rob Simon, indicating that the proposed private road access (the subject of the three variance requests) would be adequate for safe, year round travel, especially given the low density rural nature of the development. That information was provided again in the remand hearing of August 15th. (See Transcript pages 10 - 15).

Mr. Galloway followed up his written testimony with an oral statement, again discussing the cost, public benefit, low density rural nature of the proposed development. (See Transcript pages 43 - 50).

The Board finds that sufficient evidence was presented to justify the Commission's findings.

II. WAS ANY UNDUE HARDSHIP THAT EXISTS A RESULT OF GALLOWAY'S OWN MAKING, THUS DISQUALIFYING HIM FROM BEING ALLOWED A VARIANCE AS REQUESTED.

The Appellants point to an assertion that undue hardship cannot be self created as grounds for their current appeal, and argue that the applicant, Galloway, purchased the land in 1985, at a time when the existing ordinances were in effect; therefore, he caused his own hardship by purchasing land knowing development would require a variance. Appellants argue that Dawson Enterprises, Inc. v. Blaine County, 98 Idaho 506, 516, 567 P.2d 1257, 1267 (1977) applies to support their position.

In *Dawson*, the applicant owned an option to purchase land zoned for agricultural and residential uses only. Dawson filed a request for a land use change, seeking to have his parcel zoned as commercial for use as an automobile dealership. He then exercised his purchase option, bought the land, and claimed (among other things) that an undue financial hardship would now arise if the zoning change was not allowed.

Dawson presents facts very different from this case. Here, the land was purchased in 1985. Approximately 20 years elapsed before Galloway sought to subdivide the property. Further, Galloway's property has always been zoned for residential purposes, which is the use he seeks to make of his property. Galloway seeks variances for road easements and widths incidental to that allowed use. Dawson, alternatively, bought his property after filing a request for a variance, and knowing full well that the entire use he intended was disallowed, and gambled on obtaining a zoning change, or a variance to allow his use.

Changing the land use for a specific parcel of land to something the entire neighborhood is not zoned for presents a very different question than obtaining a variance for a road easement and width to support an already authorized and allowed use. To change the land use entirely raises the issue of spot zoning, something not at issue here, and which the *Dawson* court spent

significant time discussing. Of note, all cases citing *Dawson* involve spot zoning or requests for variances to change land use entirely, rather than variances for roads incidental to an already authorized land use.

With regard to hardship in the context of spot zoning, the *Dawson* court held as follows:

Moreover, we cannot overlook the fact that Dawson's hardship in this case is self-inflicted since the option to purchase was exercised in full knowledge that the land was zoned residential and that a variance for commercial use had not been granted. As the Supreme Court of Colorado said, under similar circumstances: "*Nopro's land investment was made in full knowledge of the zoning limitations. It took the calculated risk that it could break the zoning use barrier and thereby double the profit from its investment. Having been denied the means by which this might be accomplished, it claims hardship. If hardship exists under the facts of this case and we hold that it does not it was incurred voluntarily by the choice of Nopro and was self-inflicted."* *Nopro Co. v. Town of Cherry Hills Village*, 180 Colo. 217, 504 P.2d 344, 349 (1973). In *Nopro*, as indicated, the developer was realizing a substantial profit on his investment and was complaining only that it could not make twice as much. *Manger v. City of Chicago*, 121 Ill.App.2d 358, 257 N.E.2d 473 (1970), was closer to the economic facts of this case in that plaintiff had actually put out cash for land that would be worth much less if the zoning variance was not granted. Nonetheless, the Illinois court reached the same conclusion: "*Plaintiffs purchased the two parcels comprising the subject property with full knowledge of its zoning restrictions. While a party who purchases property in the face of the existing zoning classification is not precluded from challenging the validity of the zoning classification, his purchase in the face of the existing zoning classification is one factor to be considered. (Citation omitted.) Plaintiffs admit that they purchased the two parcels comprising the subject property with the intention of endeavoring to secure a change of zoning classification and described their plans as a '*calculated risk*' in paying \$100,000.00 for what they knew to be the then true value of \$15,000.00."* 257 N.E.2d at 479. Accordingly, the variance was denied. *Dawson Enterprises, Inc. v. Blaine County*, 98 Idaho 506, 516, 567 P.2d 1257, 1267 (1977).

Dawson and those cases cited therein go on to describe that self inflicted hardship, if it exists, is a factor to be considered in whether or not to grant or deny a variance, but is not controlling. Therefore, this Board of Commissioners cannot say that the Planning and Zoning Commission abused its discretion when deciding to grant the variances in spite of the argument of self inflicted hardship and finds in favor of Galloway on this issue.

III. DOES THE BARE LANGUAGE OF THE EASEMENT OBTAINED BY GALLOWAY PROHIBIT HIM FROM SUBDIVIDING?

In the context of planning and zoning, it is not the practice or policy of the Clearwater County Planning and Zoning Commission, or the Board of Commissioners, to become embroiled in disputes between landowners regarding the intent of easements which have been granted. The County looks at the bare language of the easement itself, and if that language appears clear and unambiguous to the County, sufficient to provide a right of access to the proposed subdivision, the County will not delve further into the intent of the parties regarding that easement. The Clearwater County planning and zoning structure is not intended, nor shall be utilized, as a substitute for a court of law to resolve easement disputes between landowners.

Courts recognize this approach when interpreting easements in general:

"In construing an easement in a particular case, the instrument granting the easement is to be interpreted in connection with the intention of the parties, and the circumstances in existence at the time the easement was granted and utilized. Dr. James Cool, D.D.S. v. Mountainview Landowners Co-op. Ass'n, Inc., 139 Idaho 770, 773, 86 P.3d 484, 487 (2004)

The existence of ambiguity determines the standard of review of a lower court's interpretation of a contract or instrument. *Union Pac. R.R. Co. v. Ethington Family Trust*, 137 Idaho 435, 437-*38, 50 P.3d 450, 452-*53 (2002).

In the absence of ambiguity, the document must be construed in its plain, ordinary and proper sense, according to the meaning derived from the plain wording of the instrument. See *Juker v. American Livestock Ins. Co.*, 102 Idaho 644, 645, 637 P.2d 792, 793 (1981). *C & G, Inc. v. Rule*, 135 Idaho 763, 765, 25 P.3d 76, 78 (2001)

The easement in question (Appeal Record Section 13) provides a bare, unequivocal grant of non-exclusive easements to Galloway, and Galloway's heirs, successors and assigns, with the only limitation being as follows: "This Grant of Easements is binding upon and enures to the benefit of the heirs, assigns, and successors of the parties hereto, and the easement for ingress and egress shall not be deemed a public right-of-way."

"Public right-of-way" is a term of art, defined in Idaho Code Section 40-117 (9) as a right of way open to the public and under the jurisdiction of the public highway agency, where the agency has no obligation to construct or maintain the same. With the grant of a variance to Galloway allowing the access road to remain a private, rather than a public road, then the easement appears on its face for planning and zoning purposes, to allow for development.

This is not meant nor is to be construed as a finding based upon a disputed hearing as to the intent of the parties to the easement itself, but is to be construed as a finding solely for agency planning and zoning purposes.

Accordingly, the Board of County Commissioners, sitting as an appellate board to review the grant of variances by the Clearwater County Planning and Zoning Commission finds that such grant was not arbitrary, capricious, and was supported by substantial competent evidence, and was not made in violation of law or procedure.

Thus the grant of each of the three variances is UPHELD.

Any stay of proceedings for the pending concurrent subdivision applications is lifted, and the same shall be scheduled for hearing.

DATED this 21st day of November, 2011.



DON EBERT
Chairman

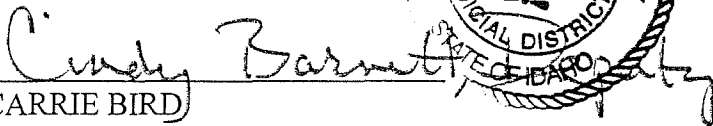


STAN LEACH
Commissioner

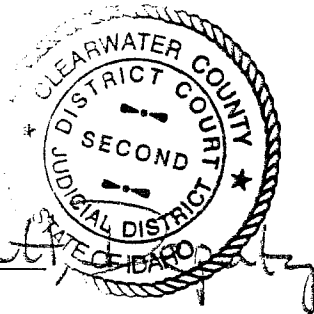
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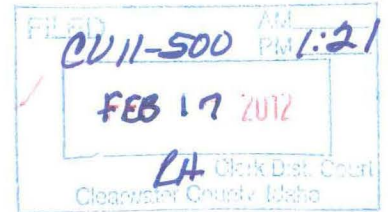
CAROLE GALLOWAY

ATTEST:



CARRIE BIRD
Clerk





E. CLAYNE TYLER, ISBN 5277
Clearwater County Prosecuting Attorney
P.O. Box 2627
Orofino, ID 83544
Telephone: 208-476-5611
Fax: 208-476-4642

Deputy: LORI GILMORE, ISBN 5877

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

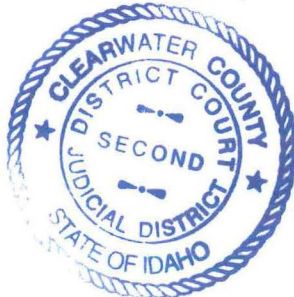
In the Matter of the Approval of Variance)
ZV2011-2)
EDWARD L. SHINN and)
DONILEE E. SHINN, husband and wife,)
Petitioners,)
BOARD OF COUNTY COMMISSIONERS)
OF CLEARWATER COUNTY, IDAHO,)
Respondent.)

CASE NO: CV2011-500

CERTIFICATION OF RECORD

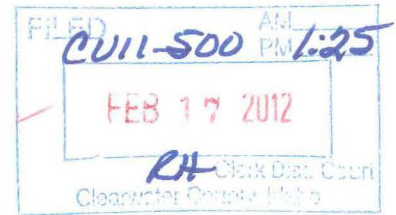
COMES NOW, Cindy Barnett, Clerk for the Clearwater County Board of
Commissioners, and hereby certifies that a true and correct copy of the original record relating to
Variance ZV2011-2 and Appeals is provided herewith.

DATED this 17th day of February, 2012.



Cindy Barnett, Deputy
CINDY BARNETT, CLERK
CLEARWATER COUNTY BOARD
OF COMMISSIONERS

E. CLAYNE TYLER, ISBN 5277
Clearwater County Prosecuting Attorney
P.O. Box 2627
Orofino, ID 83544
Telephone: 208-476-5611
Fax: 208-476-4642




Deputy: LORI GILMORE, ISBN 5877

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)	CASE NO: CV2011-500
ZV2011-2)	
)	
EDWARD L. SHINN and)	LODGING OF ADMINISTRATIVE
DONILEE E. SHINN, husband and wife,)	RECORD
)	
Petitioners,)	
)	
BOARD OF COUNTY COMMISSIONERS))	
OF CLEARWATER COUNTY, IDAHO,)	
)	
Respondent.)	
_____)	

COMES NOW, Cindy Barnett, Clerk for the Clearwater County Board of
Commissioners, and hereby gives notice that a true and correct copy of the original record
relating to Variance ZV2011-2 and Appeals was lodged with the Clerk of the Court and a
certified copy was provided to the attorney for Petitioners, Garry W. Jones.

DATED this 17th day of February, 2012.


CINDY BARNETT, CLERK
CLEARWATER COUNTY BOARD
OF COMMISSIONERS

CERTIFICATE MAILING/DELIVERY

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed or delivered to the following on this 17 day of February, 2012:

Garry W. Jones
Jones, Brower & Callery, P.L.L.C.
1304 Idaho Street
P.O. Box 854
Lewiston, ID 83501

By: 

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Bobbi Kaufman

From: Bobbi Kaufman
Sent: Wednesday, March 23, 2011 4:58 PM
To: Garry Jones (gwjones@lewiston.com)
Cc: Commissioners; Clayne Tyler
Subject: Request for Appeal Application, Request for Records, Procedures outlined
Attachments: Request to Examine Public Records.doc; Appeal.doc

Dear Mr. Jones,

Attached are the application for appeal and the form for requesting public records. Below are Clearwater County Subdivision Ordinance Article IX Section G which states the type of appeal and the Clearwater County Zoning Ordinance Article XIII Section 1303 which is the procedure that will be followed.

SECTION G. APPEAL TO THE BOARD

Upon receipt of an appeal from the action of the Commission, the Board shall set a hearing date, using the same notification procedures outlined in Article III, Section I, #8, to include notification of all persons appearing, either in person or writing at the Commission hearing, to consider all information, testimony, Commission's minutes of the public hearing and ordinance standards to reach a decision to uphold, conditionally uphold or overrule the decision of the Commission. The Board shall only overrule the Commission by a favorable vote of the majority of the full Board.

SECTION 1303. BOARD APPEALS -- Any person or organization affected by a decision of the Commission may appeal the decision of the Commission to the Board using the following procedure:

1. The Affected Person shall transmit a notice of appeal to the Administrator and the Chair of the Board within twenty (20) days of the action of the Commission;
2. The Administrator shall transmit to the Board all papers and other material (including recordings of the Commission proceedings) constituting the record upon which the appeal is based, and shall no less than fifteen (15) days prior to the date established by the Board for consideration of the appeal, notify affected persons of the pending appeal as provided in Article XV. The Board may request such clarification, information, or recommendations from the Administrator as are necessary to the Board's deliberation;
3. A transcript of the Commission's consideration of the request shall be provided by the County at the expense of the appellant. The Board of County Commissioners shall determine an estimated fee per page to be charged for transcripts. The appellant shall pay the estimated cost of the transcript to the County in advance, and be refunded money or owe additional money when the transcript has been prepared, and the actual cost determined. The transcript shall be a complete transcript of the entirety of any and all meetings at which the application is considered by the Commission;
4. Not more than thirty (30) days from receipt of the prepared transcripts, the Board shall consider the appeal. When meeting to consider the appeal, the meeting shall be open to the public, but shall not be a public hearing, unless:
 - a. A public hearing has been requested in accordance with Section 1101 of this Ordinance; or,
 - b. A public hearing has been called by a motion of a Board member, and by majority vote or unanimous consent of the full board, at which time the Board shall observe the hearing and notification procedures provided in Article XV of this Ordinance.
5. When meeting to consider the appeal, the Board may compel County staff to be available to present information and answer such questions as the Board may have;

6. The Board may choose to uphold, conditionally uphold, overturn or postpone a decision pending further consideration. The Board shall overturn the decision of the Commission only by majority vote of the full Board;
7. Should the Board choose to overturn the decision of the Commission, the Board may refer the application back to the Commission for rehearing, and may provide such instructions to the Commission as are necessary to resolution;
8. Should the Board choose to uphold or conditionally uphold the decision of the Commission, all remedies shall be considered exhausted under local ordinance;
9. Within fifteen (15) days of the Board's decision, the Board shall notify the applicant and all affected property owners of the decision in writing, specifying;
 - a. The Ordinance provisions and standards used in evaluating the appeal;
 - b. The reasons for the action taken; and
 - c. The action aggrieved parties may take to seek remedy.
10. On its own motion, the Board may, within fourteen (14) days of issuance of its written decision, reconsider that decision.

If you have any questions, please let me know. Thank you.

Sincerely,

Bobbi Kaufman
Clearwater County Planning & Zoning Administrator
P.O. Box 586
Orofino, ID 83544
208) 476-4815

Clearwater County Application for Appeal

CLEARWATER COUNTY BUILDING & PLANNING P.O. Box 586 150 Michigan Avenue Orofino, Idaho 83544 (208) 476-4815

SUBMITTALS:

- ☒ Summarized letter by the appellant or the appellant's agent.
- ☒ Proper fee (\$20.00).

Appeal of decision is based on the record. No new evidence can be introduced.

GENERAL INFORMATION:

I am appealing a decision of the (circle one): Planning and Zoning Commission Board of County Commissioners
Date of the written decision that is being appealed: March 21, 2011
Application number (if applicable): ZV2011-2

SITE INFORMATION:

Location: Quarter: SW Section: 09 Township: 37 N Range: 1E Total Acres: 99.82
Subdivision Name: Southfork Estates RP #: _____
Site Address: north of Middle Road, east of Brown Road City: _____
Tax Parcel Number(s): _____ Zoning: _____ Area of City Impact: no

APPELLANT:

Name: Edward L. & Donilee E. Shinn
Address: 671 Chief Sampson Road
City: Toppenish State: WA Zip: 98948
Telephone: 509-854-2429 Fax: _____
Email: _____

AGENT:

Name: Garry W. Jones
Address: 1304 Idaho Street
City: Lewiston State: ID Zip: 83501
Telephone: 208-743-3591 Fax: 208-746-9553
Email: gwjones@lewiston.com

I consent to this application and allow Building and Planning staff to enter the property for site inspections related to this application.

I certify this information is correct to the best of my knowledge.

Signature: (Owner)

Date

Signature: (Applicant)

Date

OFFICE USE ONLY						Permit:	Y	N	#:
File No.:		Received By:				Date:		Fee:	
Letter of Appeal:		Y	N	Map:		Y	N	Documentation:	

Clearwater County Application for Appeal

CLEARWATER COUNTY BUILDING & PLANNING P.O. Box 586 150 Michigan Avenue Orofino, Idaho 83544 (208) 476-4815

SUBMITTALS:

- ☒ Summarized letter by the appellant or the appellant's agent.
2. ☒ Proper fee (\$20.00).

Appeal of decision is based on the record. No new evidence can be introduced.

GENERAL INFORMATION:

I am appealing a decision of the (circle one): Planning and Zoning Commission Board of County Commissioners
Date of the written decision that is being appealed: March 21, 2011
Application number (if applicable): SUB 060096

SITE INFORMATION:

Location: Quarter: SW Section: 09 Township: 37 N Range: 1E Total Acres: 99.82
Subdivision Name: Southfork Estates RP #: _____
Site Address: north of Middle Road, east of Brown Road City: _____
Tax Parcel Number(s): _____ Zoning: _____ Area of City Impact: no

APPELLANT:

Name: Edward L. & Donilee E. Shinn
Address: 671 Chief Sampson Road
City: Toppenish State: WA Zip: 98948
Telephone: 509-854-2429 Fax: _____
Email: _____

AGENT:

Name: Garry W. Jones
Address: 1304 Idaho Street
City: Lewiston State: ID Zip: 83501
Telephone: 208-743-3591 Fax: 208-746-9553
Email: gwjones@lewiston.com

I consent to this application and allow Building and Planning staff to enter the property for site inspections related to this application.

I certify this information is correct to the best of my knowledge.

Signature: (Owner)

Date

Signature: (Applicant)

Date

OFFICE USE ONLY				Permit:	Y	N	#:	
File No.:	Received By:			Date:	Fee:			
Letter of Appeal:	Y	N	Map:	Y	N	Documentation:	Y	N

JONES, BROWER & CALLERY, P. L. L. C.
LAWYERS

1304 Idaho Street, P. O. Box 854
Lewiston ID 83501

Garry W. Jones
Robert L. Brower
Thomas W. Callery

(208) 743-3591
Fax: (208) 746-9553

e-mail: gwjones@lewiston.com
rbrower@lewiston.com
tcallery@lewiston.com

March 25, 2011

Clearwater County Planning & Zoning Commission
Attention: Bobbie Kaufman
P. O. Box 586
Orofino, ID 83544

RE: Galloway / Shinn

Dear Bobbie:

I am enclosing separate *Notices of Appeal* for hearing ZV 2011-2 and SUB 060096, both of which were held before the Planning & Zoning Commission on March 21, 2011. It is my understanding that upon the filing of these appeals, that all further action in the Hidden Valley Subdivision renamed Southfork Estates will be postponed until final hearing of the appeal. Specifically, it is my understanding that there will be no hearing of SUB060096 on April 4, 2011. Would you please confirm, in writing, that there will be no hearing on April 4, 2011.

Your form requires a "summarized letter". I am not sure what that means, but I would respond as follows:

ZV 2011-2. Grounds for appeal. No facts or testimony were presented which would authorize the issuances of a variance under the terms and conditions of the Clearwater County Subdivision Ordinance. Further, that the easement which the Galloways propose to use for access to the property does not allow that road to be utilized for easement for ingress and egress for parties other than Mr. and Mrs. Galloway. Finally, that it is not appropriate for a variance to be granted from the requirement that access to the subdivision be dedicated for public use.

SUB 060096. As stated at the public meeting, my clients are appealing any recommendation of approval of the subdivision by the Planning & Zoning Commission prior to my clients appeal of the issuance of variance being determined by the Board of County Commissioners. I recognize this may not be necessary to appeal as their decision is based upon the variance granted in ZV 2011-2. Nevertheless, I feel that it is necessary to file this appeal in order to protect my clients' rights.

Bobbie Kaufman

March 25, 2011

Page 2

Please find my check, payable to Clearwater County in the sum of \$40.00 for the appeals in both cases. I have ordered a transcript and paid the anticipated costs. It is my intention to contact you on Tuesday to determine if you require any further information in order to perfect our appeal.

Sincerely,

JONES, BROWER & CALLERY, P.L.L.C.


GARRY W. JONES

GWJ;pj

Enclosures

cc: Edward L. & Donilee E. Shinn

JONES, BROWER & CALLERY, P. L. L. C.
LAWYERS

1304 Idaho Street, P. O. Box 854
Lewiston ID 83501

Garry W. Jones
Robert L. Brower
Thomas W. Callery

(208) 743-3591
Fax: (208) 746-9553

e-mail: gwjones@lewiston.com
rbrower@lewiston.com
tcallery@lewiston.com

March 30, 2011

Clearwater County Planning & Zoning Commission
Attention: Bobbie Kaufman
P. O. Box 586
Orofino, ID 83544

RE: Galloway / Shinn

Dear Bobbie:

Pursuant to your telephone call of Wednesday, March 30, 2011, enclosed please find my check, payable to Clearwater County in the sum of \$20.00 for the appeals in both cases. It is my understanding that you will be returning the \$40.00 check, previously forwarded to you, to my office.

Thank you for your assistance in this matter.

Sincerely,

JONES, BROWER & CALLERY, P.L.L.C.



GARRY W. JONES

GWJ;pj

Enclosure

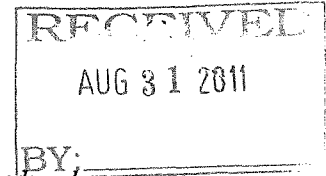
cc: Edward L. & Donilee E. Shinn w/o enc.

Clearwater County Application for Appeal

CLEARWATER COUNTY BUILDING & PLANNING P.O. Box 586 150 Michigan Avenue Orofino, Idaho 83544 (208) 476-4815

SUBMITTALS:

- ☒ Summarized letter by the appellant or the appellant's agent.
- ☒ Proper fee (\$20.00).



Appeal of decision is based on the record. No new evidence can be introduced.

GENERAL INFORMATION:

I am appealing a decision of the (circle one): Planning and Zoning Commission Board of County Commissioners
Date of the written decision that is being appealed: August 15, 2011
Application number (if applicable): ZV2011-2

SITE INFORMATION:

Location: Quarter: SW Section: 09 Township: 37 N Range: 1E Total Acres: 99.82
Subdivision Name: Southfork Estates RP #: _____
Site Address: north of Middle Road, east of Brown Road City: _____
Tax Parcel Number(s): _____ Zoning: _____ Area of City Impact: no

APPELLANT:

Name: Edward L. & Donilee E. Shinn

Address: 671 Chief Sampson Road
City: Toppenish State: WA Zip: 98948
Telephone: (509) 854-2429 Fax: _____
Email: _____

AGENT:

Name: Garry W. Jones

Address: 1304 Idaho Street
City: Lewiston State: ID Zip: 83501
Telephone: (208) 743-3591 Fax: (208) 746-9553
Email: gwjones@lewiston.com

I consent to this application and allow Building and Planning staff to enter the property for site inspections related to this application.

I certify this information is correct to the best of my knowledge.

Signature: (Owner)

Date

Signature: (Applicant)

Date

OFFICE USE ONLY

Permit: Y N

#:

File No.:

Received By: JK

Date:

Fee: 20.00

Letter of Appeal: (Y) N

Map: Y (N)

Documentation: (Y) N

JONES, BROWER & CALLERY, P. L. L. C.
LAWYERS

1304 Idaho Street, P. O. Box 854
Lewiston ID 83501

Garry W. Jones
Robert L. Brower
Thomas W. Callery

(208) 743-3591
Fax: (208) 746-9553

e-mail: gwjones@lewiston.com
rbrower@lewiston.com
tcallery@lewiston.com

August 31, 2011

Clearwater County Planning & Zoning Commission
Attention: Bobbie Kaufman
P. O. Box 586
Orofino, ID 83544

RE: Galloway / Shinn

Dear Bobbie:

I am enclosing *Notices of Appeal* for hearing ZV 2011-2, which was held before the Planning & Zoning Commission on August 15, 2011. It is my understanding that upon the filing of this appeal, all further action in the Hidden Valley Subdivision renamed Southfork Estates will be postponed until final hearing of the appeal. Would you please confirm, in writing, that there will be no further hearing until this present appeal is heard.

Your form requires a "summarized letter," but I would respond as follows:

ZV 2011-2 Grounds for Appeal. Edward Galloway presented insufficient evidence at the hearing before the commission on which the commission could authorize issuance of a variance under the terms and conditions of Clearwater County Subdivision Ordinance. Further, any grounds of hardship as presented by Mr. Galloway were of his own making. At the time Mr. Galloway acquired the property which he intends to use for subdivision purposes, there was no sufficient recorded access. Mr. Galloway testified that he purchased the property in 1985. At that time, the present standards for the width of highway were in existence. Subsequently, Mr. Galloway obtained an easement from the predecessors in title to Edward and Donilee Shinn, which easement was only 30 feet wide. Again, this was less than the amount then required by the Clearwater County Subdivision Ordinance. Any hardship that Mr. Galloway may have experienced by virtue of insufficient access to the property is of his own making. Hardship of the applicant's own making cannot be the grounds for the granting of a variance.

Nothing herein contained waives the position of the applicants set forth in their last appeal, to wit: (1) that the easement which Galloways proposed to use for access to the property does not allow that road to be utilized for an easement for ingress and egress for parties other than Mr.

Clearwater County Planning & Zoning Commission
Attention: Bobbie Kaufman
August 31, 2011
Page Two

and Mrs. Galloway, and (2) it is not appropriate for a variance to be granted from the requirement that access to this subdivision be dedicated for public use.

Please find my check payable to Clearwater County in the sum of \$20.00 for the appeal. I have contacted Keith Evans office and left a message to obtain an estimate for the transcript.

Sincerely,

JONES, BROWER & CALLERY, P.L.L.C.

A handwritten signature in dark ink, appearing to read "Garry W. Jones", written over a horizontal line.

GARRY W. JONES

GWJ/k

Enclosures

cc: Edward L. & Donilee E. Shinn
Clearwater County Board of Commissioners

CARRIE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
CROFINO, IDAHO

Garry W. Jones
JONES, BROWER & CALLERY, P.L.L.C.
1304 Idaho Street
P. O. Box 854
Lewiston, ID 83501
(208) 743-3591
Idaho State Bar No. 1254

2011 DEC 19 AM 11 39

CASE NO. CV 2011-500

BY DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)
ZV2011-2)

CASE NO. CV 2011-500

EDWARD L. SHINN and)
DONILEE E. SHINN, husband and wife,)

PETITION FOR JUDICIAL REVIEW

Petitioners,)

BOARD OF COUNTY COMMISSIONERS))
OF CLEARWATER COUNTY, IDAHO,)

Fee Category: _____

Fee: \$88.00

Respondent.)

COMES NOW EDWARD L. SHINN and DONILEE SHINN, husband and wife, petitioners, by and through GARRY W. JONES, their attorney of record, and petition this court for judicial review pursuant Idaho Administrative Procedures Act and specifically, Idaho Code Section 67-5270 et seq., and Rule 84 of the Idaho Rules of Civil Procedure, of the decision of the Board of County Commissioners, Clearwater County, Idaho, denying petitioners appeal of Variance ZV2011-2 authorized by the Clearwater County Planning and Zoning Commission in said matter, in their decision dated November 21, 2011, and support thereof states the following:

1. Petitioners, EDWARD L. SHINN and DONILEE SHINN, husband and wife, are the petitioners herein and the owners of the following described real property located in Clearwater County, Idaho, to-wit:

Township 37 North Range 1 East Boise Meridian

Section 16: NW1/4

Section 17: N1/2 NE1/4, SE1/4 NE ¼

2. The real property owned by Shinns and described in paragraph 1 is adjacent to certain real property owned by Edward Galloway and Carole Galloway, in Clearwater County, and the subject of Subdivision Request SUB060096.

3. Access from public right of way (Middle Road), to the real property Galloways are attempting to subdivide is a 30 foot easement from said Middle Road over and across real property owned by Shinn to the Galloway property. In order to obtain approval of their requested subdivision, the Galloways have requested variances relating to the 30 foot easement, which variances are herein set forth in full.

4. Shinn's have disputed, for a variety of reasons as set forth hereinafter, that such easement is adequate under the Clearwater County Subdivision Ordinance to provide such access as required by subdivision ordinance.

5. The variance request process culminated in the Clearwater County Board of Commissioners denying on November 21, 2011, the appeal of the Petitioners of their appeal of the Clearwater County Planning and Zoning Commission's granting of all variances requested by Galloway.

6. Petitioners, EDWARD L. SHINN and DONILEE SHINN seek judicial review of the Clearwater County Board of Commissioners decision on appeal of Edward and Carol Galloway's variances, ZV2001-2.

7. Procedurally, the chronological order of Galloway's attempts to meet the Clearwater County's subdivision ordinance by the use of the Shinn easement is as follows:

A) November 20, 2006 - the preliminary plat in Clearwater County Subdivision Ordinance Request SUB060096 submitted by Edward and Carole Galloway is approved as to the preliminary plat. No final decision is reached on roads outside the proposed subdivision.

B) November 17, 2008 - hearing is held on approval for final plat approval on the Galloway subdivision. No decision is reached as various issues regarding access from public road to the Galloway subdivision remain unanswered.

C) March 21, 2011 - hearing held at Clearwater Planning and Zoning Commission on Variance ZV2011-2 filed by Edward and Carole Galloway requesting variances of access road specifications under Article 4 of the Clearwater County Subdivision ordinance as follows:

1. Change right of way width from 60 feet to as required by the subdivision ordinance down to 30 feet and then down to 15 feet at the actual property line.

2. Change surface of finished width from 24 feet as required by Subdivision Ordinance to 18 feet, then down to 15 feet at the actual property line.

3. Set aside requirement to dedicate the access road to public use as required by the subdivision ordinance.

At said meeting and after public testimony, the Clearwater County Planning and Zoning Commission granted the variance requests of Galloways. Said public hearing was recorded, the recording of which is in possession of the clerk of the Clearwater County Planning and Zoning Commission. The written decision granting such variances was dated April 4, 2011.

4. Appeal was timely filed by Shinn on the granting of the variances on the following grounds:

a. No facts were presented which would justify the issuance of a variance under the regulations and conditions of the Clearwater County Subdivision Ordinance.

b. Easement by which the Galloways propose to use for access to their property does not allow¹ that the road be utilized for easement for ingress and egress by parties other than the Galloways.

c. That it is not proper for a variance to be granted from the requirement that access to the subdivision be dedicated to the public.

D) May 23, 2011 - argument was heard on the Shinn appeal.

E) July 29, 2011 – the Clearwater County Board of Commissioners remanded the variance request of the Galloways to the Clearwater Planning and Zoning Commission, with specific instructions to review and identify the facts of an undue hardship which would justify the granting the variances.

F) August 15, 2011 – a further hearing was held by the Clearwater County Planning and Zoning Commission on the variance at the request of Galloways. Said public hearing was recorded, the recording of which is in possession of the clerk of the

Clearwater County Planning and Zoning Commission. At such hearing, it was determined that facts were sufficient for the granting of a subdivision ordinance on the basis of undue hardship and the variances were granted.

G) August 31, 2011 – Shinn filed their appeal of the Planning and Zoning decision. The grounds for appeal were:

a) Insufficient evidence presented to authorize the Commission to enter findings regarding hardship.

b) Any hardship as presented by Mr. Galloway were of their own making in that when they purchased the property, there was no access to the property. The present 60 foot requirement for right of way access and 24 foot requirement for surfaced areas were in the subdivision ordinance at the time the Galloways purchased their property.

c) That the easement that the Galloways used does not allow the road to be utilized for ingress and egress by parties other than the Galloways.

d) That there is no justification for a variance to be granted from the subdivision requirement that access to the subdivision be dedicated for public use.

H) October 3, 2011 – Shinns' appeal heard before Clearwater County Board of Commissioners. Said public hearing was recorded, the recording of which is in possession of the clerk of the Clearwater County Planning and Zoning Commission.

I) November 21, 2011 – the Clearwater County Board of Commissioners denied the appeal of the Shinns and granted the variance of the Galloways. A copy of their decision is attached hereto as Exhibit A.

J) December 5, 2011 – Hearing on approval of the Galloways final plat was approved. Written decision has not been issued.

8. This petition is brought pursuant to the Idaho Local Planning Act and the Idaho Administrative Procedures Act. Transcripts of the hearing held on March 21, 2001 and August 15, 2011, have previously been prepared and are part of the Clearwater County Planning and Zoning/County Board of Commissioners record. A transcript of the hearing held before Clearwater County Board of Commissioners on October 3, 2011, has not been prepared and has been requested.

9. That the clerk of the Clearwater County Commissions should prepare the record of the Administrative Hearing before the County Commissioners.

10. That the issues on appeal are identical to those presented to the Clearwater County Board of Commissioners, to-wit:

a. No facts were presented which would justify the issuance of a variance under the regulations and conditions of the Clearwater County Subdivision Ordinance.

b. Easement by which the Galloways propose to use for access to their property does not allow that the road be utilized for easement for ingress and egress by parties other than the Galloways.

c. That it is not proper for a variance to be granted from the requirement that access to the subdivision be dedicated to the public.

d) That there is no justification for a variance to be granted from the subdivision requirement that access to the subdivision be dedicated for public use.

Additional grounds for review may be requested upon review of the complete transcript and record.

11. This petition also requests leave to present additional evidence, documentary and testimonial that will assist the court in its review of the decision of the County Commissioners, pursuant to Idaho Code section 67-5276.

12. The Clearwater County Commissioners decision is denying the appeal of the Shinns is not supported by substantial evidence, is arbitrary and capricious, and an abuse of discretion, and is in violation of the constitutional and statutory provisions, all contrary to Idaho Code Section 67-5279. Petitioners are entitled to an order of the court reversing the decision of the Clearwater County Board of Commissioners approving Subdivision Variances to the County with directions to deny the variances requested by Galloways.

13. Petitioner has retained the services of Garry W. Jones, attorney at law, and has incurred attorney fees and costs of representation in this matter and is entitled to award of attorney fees pursuant to Idaho Code sections 12-117, 12-120, 12-121.

14. All hearings took place in Clearwater County, Idaho, and Clearwater County is the proper venue for the filing of this present petition.

15. The petitioners have exhausted all administrative appeals.

16. This petition is timely filed.

17. That the undersigned, as attorney of record for the petitioners, hereby certifies:

A. That service of a copy of this petition has been made upon the Clearwater County Board of Commissioners.

B. That request has been made upon the Clerk of the Clearwater County Board of Commissioners for the estimated fee of the preparation of the transcript. Such estimate was not available at the time of signing of this petition. Petitioners are prepared to pay the estimated fee of transcript upon receiving the estimated cost.

C. That request has been made upon the Clerk of the Clearwater County Board of Commissioners for the estimated fee of the preparation of the record. Such estimate was not available at the time of signing of this petition. Petitioners are prepared to pay the estimated fee of record upon receiving the estimated cost.

WHEREFORE, petitioners pray for relief as follows:

1. For an order declaring that the approval of variances requested by Edward E. Galloway and Carole Galloway as ZV2011-2 should be set aside and that said variances be denied. At such time as the variances are denied, the request of the Galloways for the Subdivision Request SUB060096 cannot be sustained and should also be denied.
2. For an order that the transcript of hearings and administrative record should be prepared.
3. That the petitioner be awarded costs and attorney fees incurred incurred in pursuant this matter.
4. For such other further relief as may be deemed appropriate by the court.

DATED this 19th day of December, 2011.

JONES, BROWER & CALLERY, P.L.L.C.
Attorneys for Petitioners



GARRY W. JONES

JONES, BROWER & CALLERY, P. L. L. C.
LAWYERS

1304 Idaho Street, P. O. Box 854
Lewiston ID 83501

Garry W. Jones
Robert L. Brower
Thomas W. Callery

(208) 743-3591
Fax: (208) 746-9553

e-mail: gwjones@lewiston.com
rbrower@lewiston.com
tcallery@lewiston.com

March 25, 2011

Clearwater County District Court
Clearwater County Courthouse
150 Michigan Avenue
Orofino, ID 83544

RE: Galloway / Shinn

Dear Clerk:

I have enclosed my check in the sum of \$500 payable to the Clerk of the Court. It is my understanding that you will hold this money for payment of Keith Evans for preparation of the transcripts of Clearwater County Planning & Zoning meeting in hearings ZV 2011-2 and SUB 060096, both of which were held on March 21, 2011.

Thank you.

Sincerely,

JONES, BROWER & CALLERY, P.L.L.C.


GARRY W. JONES

GWJ;pj
Enclosure

cc: Edward L. & Donilee E. Shinn
Keith Evans

JONES, BROWER & CALLERY, P. L. L. C.
LAWYERS

1304 Idaho Street, P. O. Box 854
Lewiston ID 83501

Garry W. Jones
Robert L. Brower
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(208) 743-3591
Fax: (208) 746-9553

e-mail: gwjones@lewiston.com
rbrower@lewiston.com
tcallery@lewiston.com

March 25, 2011

Clearwater County Planning & Zoning Commission
Attention: Bobbie Kaufman
P. O. Box 586
Orofino, ID 83544

RE: Galloway / Shinn


Dear Bobbie:

I enclose my request to Examine and/or Copy Public Records as set forth in the enclosed Request. I am requesting copies of all public records which relate to Middle Road east of Brown Road, which would establish that portion of Middle Road as a County road. I recognize that some of these records are difficult to locate. At the Public Hearing on the Galloway Subdivision on March 21, 2011, it was my understanding that Bob Simon did have a copy of at least one of the Orders.

Thank you for your attention to this matter.

Sincerely,

JONES, BROWER & CALLERY, P.L.L.C.


GARRY W. JONES

GWJ;pj
Enclosure
cc: Edward L. & Donilee E. Shinn



CLEARWATER COUNTY BUILDING & PLANNING
150 Michigan Ave • PO Box 586 • Orofino, ID 83544
(208) 476-4815 • Fax (208) 476-8994 • bp@clearwatercounty.org

REQUEST TO EXAMINE AND/OR COPY
PUBLIC RECORDS

TO: BOBBIE KAUFMAN

DATE: 3/25/11

I hereby request, pursuant to Idaho Code 9-338, to examine and/or copy the following public records:

Any and all records which relate to the establishment of Middle
Road in Clearwater County, east of Brown Road.

() These records specifically pertain to myself

() I wish to merely examine the records

☒ I wish copies of these records

Printed Name: Garry W. Jones

Mailing Address: P.O. Box 854, Lewiston, ID 83501

Telephone Number with Area Code: (208) 743-3591

Signature: 

*I acknowledge by my signature that the records sought
by this request will not be used for a mailing list
or telephone list as set forth in the Idaho Code 9-348.*

REQUEST TO EXAMINE AND/OR COPY PUBLIC RECORDS

**RESPONSE TO REQUEST TO EXAMINE
AND/OR COPY PUBLIC RECORDS**

DATE: April 7, 2011

NAME OF REQUESTOR: Danny Jones

DATE OF REQUEST: March 25, 2011

1. ☒ Your request has been approved. See attached documents or please contact the undersigned to arrange a time to examine the records. (This may be a partial approval. See items 2 or 3 regarding records not located or deemed exempt.)

<u>59</u> Page provided x \$0.10 per page	<u>\$ 5.90</u>
_____ Copies provided at _____	_____
_____ Sales Tax	_____
<u>1</u> \$10.00 for copy on CD/FTR	<u>\$ 10.00</u>
Total Cost	<u>15.90</u>

2. ☐ It has been determined that additional time is required to located or retrieve the records you have requested. Said records shall be available on _____ or further information will be provided regarding your request. (No longer than 10 working days from request.)

3. ☐ Your request has been denied for the following reason: _____

4. ☐ The attorney for the entity has reviewed your request and this response.

NOTICE: PURSUANT TO IDAHO CODE 9-343 YOU HAVE 180 DAYS TO APPEAL. THIS DECISION BY FILING A PETITION IN STATE DISTRICT COURT IN THE COUNTY WHERE ALL OR PART OF THE RECORDS ARE LOCATED.

CUSTODIAN

DEPARTMENT

PHONE

RESPONSE TO REQUEST TO EXAMINE AND/OR COPY PUBLIC RECORDS

JONES, BROWER & CALLERY, P. L. L. C.
LAWYERS

1304 Idaho Street, P. O. Box 854
Lewiston ID 83501

Garry W. Jones
Robert L. Brower
Thomas W. Callery

NOV 14 2011
(208) 743-3591
Fax: (208) 746-9553

e-mail: gwjones@lewiston.com
rbrower@lewiston.com
tcallery@lewiston.com

November 10, 2011

Clearwater County Board of Commissioners
Attention: Cindy
Clearwater County Courthouse
150 Michigan Avenue
Orofino, ID 83544

RE: Galloway / Shinn

Dear Cindy:

This letter will confirm our telephone conversation of today regarding Ed and Donnilee Shinn's appeal of a variance granted in favor of the Galloways. It is my understanding that the Commissioners affirmed the actions of the Planning and Zoning Commission and denied the Shinns' appeal. I further understand that the Commissioners will be signing a formal order confirming their action. On the phone today, you agreed that you would be sending me a copy of the final Order when it has been executed by the Commissioners.

It is necessary that I receive a copy of the Order as the Shinns have directed me to seek judicial review of the Commissioners' decision. It is my understanding that the time for appeal does not commence until the final Order is signed. In anticipation of the filing of the appeal, would you please let me know the cost of the both the transcript for the appeal hearing held on October 24, 2011, and the Commissioners' deliberation. Upon receiving this information I will send a check to your office.

If I have misunderstood any portion of our conversation, please let me know right away.

Sincerely,

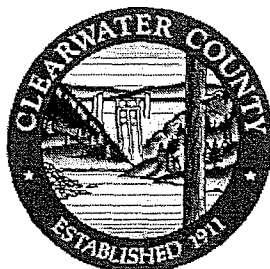
JONES, BROWER & CALLERY, P.L.L.C.


GARRY W. JONES

GWJ/pj

cc: Edward L. & Donilee E. Shinn
Clayne E. Tyler, Prosecuting Attorney

P.O. Box 586
Orofino, ID 83544
Phone: (208) 476-3615
Fax: (208) 476-8902



Commissioners
Don Ebert, Chairman
Stan Leach, Commissioner
Carole K Galloway, Commissioner

Clearwater County Commissioners

November 22, 2011

Jones, Brower & Callery, P.L.L.C.
Garry W. Jones, Attorney
PO Box 854
Lewiston, ID 83501

Re: Galloway/Shinn Appeal

Dear Mr. Jones:

Enclosed is a copy of the findings of facts on the decision of the Clearwater County Board of Commissioners on the Appeal of Edward and Carole Galloway Variances ZV2011-2. The Board approved and signed them November 21, 2011.

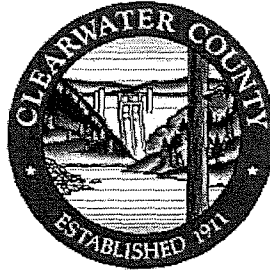
A request has been sent to Keith Evans to provide a transcription of the hearing tape from October 24th and November 7th. Once I hear from Mr. Evans I will notify you of the cost.

My question is there a stay on the hearing of the final plat of the Subdivision that is set for public hearing on December 12, 2011? Please contact our office if there are any further questions.

Sincerely,

Cindy Barnett, Deputy Clerk
Board of County Commissioners
Clearwater County, ID

P.O. Box 586
Orofino, ID 83544
Phone: (208) 476-3615
Fax: (208) 476-8902



Commissioners
Don Ebert, Chairman
Stan Leach, Commissioner
Carole K Galloway, Commissioner

Clearwater County Commissioners

November 22, 2011

Keith Evans
Court Transcriber
Rt 1 Box 36H
Kooskia, ID 83539

Re: Appeal Hearing of P&Z Decision on Variance ZV2011-2 Galloway

Dear Mr. Evans:

The Board of County Commissioners ask that you prepare two copies of a transcription of the hearing tape on the Appeal of the Variance ZV2011-2 Galloway held before the Board on October 24, 2011 and again for decision on November 7, 2011.

Attorney Garry Jones as representation of Edward and Donilee Shinn is taking further action to appeal the BOCC decision of upholding the P&Z Commission decision on the variance. The BOCC upheld the decision and scheduled a hearing of the final plat of the Galloway Subdivision SUB060096 renamed Southfork Estates.

Enclosed is a copy of the BOCC hearing tape. Please bear with the tape at the end it is very hard to understand. We apologize and are in the process of replacing the recording system. Also enclosed is copy of the letter from Mr. Jones for filing an appeal of the variance.

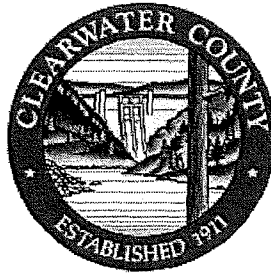
Thank for your assistance in this matter. If you have any questions please contact our office at 208-476-3615.

Sincerely,

A handwritten signature in black ink that reads "Don Ebert".

Don Ebert, Chairman
Board of County Commissioners
Clearwater County, ID

P.O. Box 586
Orofino, ID 83544
Phone: (208) 476-3615
Fax: (208) 476-8902



Commissioners
Don Ebert, Chairman
Stan Leach, Commissioner
Carole K Galloway, Commissioner

Clearwater County Commissioners

January 31, 2012

Jones, Brower & Callery, P.L.L.C.
Garry W. Jones, Attorney
PO Box 854
Lewiston, ID 83501

Re: Galloway/Shinn Appeal

Dear Mr. Jones:

Enclosed is a copy of the record for the Board of County Commissioners Hearing decision on the SUB060096 Final Plat of the full platting procedure for Hidden Valley Subdivision re-named Southfork Estates, a Class B Subdivision request by Edward & Carole Galloway. This includes the findings of facts from the Board's decision, correspondence and the written transcript of the hearing tape.

You submitted payment of \$150 for the costs of documents. The transcription cost from Keith Evans was \$106 and the remaining \$44 was allocated to the compilation of documents for you judicial hearing.

Please contact our office if there are any further questions.

Sincerely,

Cindy Barnett, Deputy Clerk
Board of County Commissioners
Clearwater County, ID

NOTICE OF APPEAL HEARING

Notice is hereby given that the Board of County Commissioners will hold a public hearing on Monday, May 23, 2011 at 10:00 A.M. in the Clearwater County Commissioner's Office, Clearwater County Courthouse, 150 Michigan Avenue, Orofino, Idaho.

The purpose of this hearing is to consider an appeal by Garry Jones, Attorney representing Edward L. & Donilee E. Shinn. Mr. Jones is appealing the decision by the Planning & Zoning Commission at their March 21, 2011 meeting. The P&Z Commission granted approval of the Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

In compliance with American's with Disabilities Act, anyone requesting reasonable accommodations may contact Carrie Bird at 476-5615 one-week prior to the meeting.

Board of County Commissioners.
Clearwater County, Idaho
Don Ebert, Chairman
Carrie Bird, Clerk
By Cindy Barnett, Deputy



CLEARWATER COUNTY BUILDING & PLANNING
150 Michigan Ave. • PO Box 586 • Orofino, ID 83544
(208) 476-4815 • Fax (208) 476-8994 • bp@clearwatercounty.org

NOTICE OF DISPOSITION

March 22, 2011

Mr. Ed and Mrs. Carole Galloway
524 Galloway Dr
Lenore, ID 83541-5107

COPY

Dear Mr. and Mrs. Galloway:

Whereas the Clearwater County Planning and Zoning Commission has conducted a public hearing in accordance with the procedures established in the Clearwater County Zoning Ordinance, Clearwater County Subdivision Ordinance, and the laws of the State of Idaho; and

Whereas all conditions specified in the Subdivision Ordinance for Clearwater County have been met to the satisfaction of the Planning and Zoning Commission;

This letter is issued to provide official notification of the approval of your request for ZV2011-2 a variance and of recommended approval of your request for SUB060096 a Class B Subdivision presented to the Planning and Zoning Commission on March 21, 2011.

No further action on your variance request is required.

The Board of County Commissioners will take up the question of the final decision of the request at their regular meeting on April 4, 2011, at 10:00 a.m. in the Commissioner's Office at 150 Michigan Avenue, Orofino, ID. Your presence at the scheduled meeting is not required, but is recommended.

If you have any additional questions, please contact our office.

Sincerely,

Bobbi Kaufman, Administrator
Clearwater County Building and Planning Department

P.O. Box 586
Orofino, ID 83544
Phone: (208) 476-3615
Fax: (208) 476-8902



Commissioners
Don Ebert, Chairman
Stan Leach, Commissioner
Carole K Galloway, Commissioner

Clearwater County Commissioners

April 13, 2011

Jones, Brower & Callery, P.L.L.C.
Garry W. Jones, Lawyer
PO Box 854
Lewiston, ID 83501

Re: Galloway/Shinn Appeal

Dear Mr. Jones:

Enclosed is a copy of the Notice of Appeal Hearing that the Board of County Commissioners has set to consider the appeal by Edward L. and Donilee E. Shinn against further action on the ZV2011-2 Variance by Edward & Carole Galloway.

The Board stayed their hearing on the variance and subdivision applications. The appeal hearing will allow for the Board of Commissioners to consider the decision by the Planning & Zoning Commission at their March 21, 2011 meeting.

If you have any questions please contact our office.

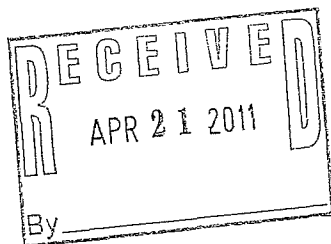
Sincerely,

Cindy Barnett, Deputy Clerk
Board of County Commissioners
Clearwater County, ID

Cc: Prosecutor Clayne Tyler
Planning & Zoning Bobbi Kaufman

Appeal	First	Last	Company	Address	City	State	Zip Code
ZV2011-2	Ed & Carole	Galloway		524 Galloway Dr	Lenore	ID	83541-5107
	Donald	Ingle		3592 Freeman Creek Rd	Lenore	ID	83541-5098
	Marshall & Rhonda	Comstock		932 N Mountain View Rd	Moscow	ID	83843-9233
	State of Idaho			PO Box 83720	Boise	ID	83720-0050
	Edward & Donilee	Shinn		671 Chief Sampson Rd	Toppenish	WA	98948-9690
	Terry	Golding	Golding Surveying & Mapping	PO Box 1818	Lewiston	ID	83501
	Garry W.	Jones	JONES, BROWER & CALLERY, PLLC	PO Box 854	Lewiston	ID	83501
	Barbara & Homer	Marvin		6633 Cougar Ridge Dr	Lewiston	ID	83501-7853
	Gary & Bonnie	Ogden		258 Silver Ln	Lenore	ID	83541-5104
	Roger	Kinyon		476 Aspen Ln	Lenore	ID	83541-9525
	Chris	Marvin		PO Box 1033	Orofino	ID	83544-1033

Clearwater Tribune
161 Main Street
P.O. Box 71
Orofino, ID 83544
Telephone:



187549
COUCOM

County Commissioner
P.O. Box 586
Orofino, ID 83544

County Commissioner
P.O. Box 586
Orofino, ID 83544

Warehouse : MAIN

04/16/2011

Net 0

APPEAL HEARING NOT. 04/16/2011

1.00	1.00	NOTICE	50.56	50.56
		Notice of Appeal Hearing		

FY I Appeal Hearing

50.56	0.00	0.00	57	50.56
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Amount due is based on 'Terms' above

0.00 50.56



CLEARWATER COUNTY BUILDING & PLANNING
150 Michigan Ave. • PO Box 586 • Orofino, ID 83544
(208) 476-4815 • Fax (208) 476-8994 • bp@clearwatercounty.org

September 7, 2011

Mr. Garry Jones of Jones, Brower, & Callery, P.L.L.C
PO Box 854
Lewiston, ID 83501

COPY

RE: Notice of Appeal for ZV2011-2

Dear Mr. Jones:

Regarding the above mentioned Notice of Appeal for ZV2011-2 heard at the August 15, 2011, Clearwater County Planning and Zoning Hearing, the Board of County Commissioners of Clearwater County approved a motion at their September 6, 2011, meeting staying subdivision request SUB060096 for South Fork Estates which was scheduled to be heard September 19, 2011.

The appeal hearing for ZV2011-2 has been scheduled for Monday, October 3, 2011, at 10:00 am in the Commissioner's Office at the Clearwater County Courthouse, 150 Michigan Avenue, Orofino, ID.

Sincerely,

Bobbi Kaufman, Administrator
Clearwater County Building and Planning Department

CC: Board of County Commissioners of Clearwater County

Sent 11/8

NOTICE OF HEARING

Notice is hereby given that the Board of County Commissioners will hold a public hearing on Monday, December 12, 2011 at 10:00 A.M. in the Clearwater County Commissioner's Office, Clearwater County Courthouse, 150 Michigan Avenue, Orofino, Idaho.

The purpose of this hearing is to consider recommendation from the P&Z Commission on the following Subdivision request;

(SUB060096) Final plat stage of the full platting procedure for Hidden Valley Subdivision re-named Southfork Estates, a Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots: Lot 1) 13.14 acres, Lot 2) 9.23 acres, Lot 3) 9.81 acres, Lot 4) 10.09 acres, Lot 5) 10.33 acres, Lot 6) 11.28 acres, Lot 7) 9.84 acres, Lot 8) 6.67 acres, Lot 9) 8.98 acres, Lot 10) 13.08 acres. This is a continuation of the 17 November 2008 public hearing. This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

The P&Z Commission granted approval of the Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096 at the August 15, 2011 meeting.

In compliance with American's with Disabilities Act, anyone requesting reasonable accommodations may contact Carrie Bird at 476-5615 one-week prior to the meeting.

Board of County Commissioners.
Clearwater County, Idaho
Don Ebert, Chairman
Carrie Bird, Clerk
By Cindy Barnett, Deputy

Please publish November 8th please bill the County Commissioners. Thank you

VARIANCE APPLICATION

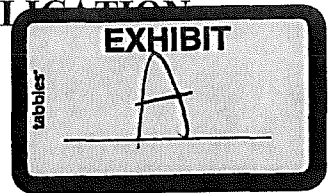
ZV2011-2 application and emailed written reasons.....	4
Maps	5
Grant of easement.....	6

Date: 01-11-2011

Permit #: ZU2011-2

CLEARWATER COUNTY SUBDIVISION VARIANCE APPLICATION

(Clearwater County Subdivision Ordinance referred to as CCSO)



Applicant Information:

Ed + Carol Balloway
Recorded Owner Name(s)

524 Balloway Dr Lenore, ID 83541-5107
Mailing Address City, State, Zip

208-476-7110
Phone Number(s)

Fax or E-mail

Property Information:

Section: 9 Township: 37N Range: 01E RP#: 37N01E094800A

Physical Location: off of Middle Road

Previous Owner(s) as noted on Deed: _____

Current Zoning: ☒ F-1 ☐ F-2 ☐ F-3 ☐ R-1 ☐ R-2 ☐ R-3 ☐ C-1 ☐ C-2 ☐ M-1 ☐ M-2 ☐ D-1

Is property located in a flood plain: ☐ Yes ☒ No If yes, what is the zone: _____

Fire District: ☐ Elk River ☒ Evergreen Rural ☐ Grangemont ☐ Greer ☐ Orofino ☐ Pierce ☐ Sunnyside Rural ☐ Twin Ridge Rural ☐ Upper Fords ☐ Weippe ☐ None

School District: ☒ Orofino Joint School District 171 ☐ White Pine Joint School District 288

Is the parcel within an Area of City Impact: ☐ Yes ☒ No If yes: ☐ Orofino ☐ Weippe ☐ Pierce ☐ Elk River

Request for Subdivision Variance Article VIII:

Section A. The Commission may grant, as a result of unique circumstances such as topographical-physical limitations or a planned unit development, a variance, as herein defined, from the provisions of this Ordinance on a finding that undue hardship results from the strict compliance with specific provisions of requirements of this Ordinance or that the application of such requirements or provision is impracticable.

Please list the following rules within the Subdivision Ordinance to be varied and why:

Page(s) 28 Article(s) IV Section(s) D Subsection(s) 2 + 4.d

2) Access Road vary from 60 to 15-30

4d) 24 ft - 15-18 ft.

Southfork

Date: _____

Permit #: _____

What are the special circumstances or conditions affecting the property that the strict application of the provisions of this Ordinance would clearly be hardship? 100' 060204 - roads within 18ft

Existing easement is 30ft except at property line only 15ft

What specific use of the property is being prevented by application of the Ordinance, as currently applied?

farm land that is straight & flat

What, if any, effect do you expect a grant of the variance to have on neighboring property owners?

None - this will be a well field used w/ spec

Please explain why the requested variance is the minimum deviation from the Ordinance standards that is needed to provide for the proposed use (i.e. why a requested road width **deviation** is necessary, not why the variance is necessary):

min. because of what he has

Documentation Required:

☐ Site Plan that must include the following (see map example):

Condition to be varied and all dimensions and the arrangement of the proposed development

☒ Fee of \$90.00 pd

Applicant may submit pictures and any other documentation to support their application.

COMPLETED APPLICATIONS MUST BE SUBMITTED BY 2:00pm ON THE REQUIRED DUE DATE.

Any uncompleted applications will not be accepted.

Notification

I, hereby, grant permission for inspection purposes of the described land and documentation. I understand it is my responsibility, as the requesting party, to provide all documents required above. I understand special circumstances may require additional information. I understand that it is a misdemeanor(s) and violation of the Clearwater County Subdivision Ordinance adopted by Clearwater County for any owner, representative, or developer to provide false or misleading information. It is the responsibility of the signing party to enter into an agreement with Clearwater County to provide true and correct information to the best of their knowledge. This shall include and is not limited to all required information and documents provided above. I understand that the granting of this permit does not give authority to violate any provisions of state or local law(s), and that all governing ordinances will be obeyed.

Owner(s)

Date

Authorized Agent(s)

Date

Agent's Company Name

Mailing Address

City, State, Zip

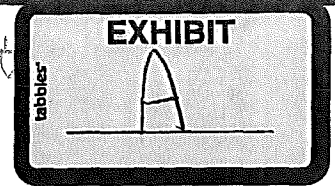
Authorized Use Only

P & Z Action: Approved Denied Date: _____ BOCC Action: Approved Denied Date: _____

Bobbi Kaufman

From: ed galloway [freemancreek@cpcinternet.com]
Sent: Thursday, January 20, 2011 11:00 AM
To: Bobbi Kaufman
Subject: variance

Gout



Bobbi—following please find the answers to the questions asked in Art. VIII—subdivision ord.

1) The relatively flat farm land terrain of the entire distance of this access (R/W) for approx. 2000' lends it's self to easily accommodating an 18' year around road way as will be built on the existing 30' deeded R/W. I need a variance from the currently required 60' to the existing 30' because this is a historical easement and also provides adequate space to install an 18' all weather road as was approved inside the said subdivision in the original approved prelim plat. Also, I would like to point out there is an additional 15' R/W to the east and adjoining the 30' R/W reserved for utilities where I plan an overhead power line.

2) In this situation (a low density rural subdivision) the County ordinance we are applying whose basic tenants were adopted in the mid 70's does not take into account the growth of Rural Clearwater County, it talks about streets, arterials streets, alleys etc. As a land developer we must use variances to make the subs conform to an outdated ordinance. As we are doing in this situation we have to right mistakes made in the original approved plat.

3) The access road addressed in this variance was determined not to need a variance during initial public discussions as it is exterior of the main sub. To try and correct these mistakes I am seeking a variance of the R/W from 60' to 30' in width, finished road width from 24' to 18' , and a reduction from the 30'x18' variance reductions to 15' at the actual property line(bottleneck) for an infinitesimal distance. These variances do not change actual on the ground specs on the planned sub. The public welfare is not impacted at all since the changes will not have an impact on emergency vehicles. Nor will it impact other owners in the area as the design and implementation is entirely within parameters of the deeded R/W. and the original(approved) plat. Carole and I are doing this low density sub with applicable CC&Rs to limit impact on the neighbors both visually and physically.

4) I have been assured by the County attorney and Planning administrator that this request does not violate State Codes, it deals with County ordinances which can, by ordinance, be varied to fit unaddressed situations.

5) These variances are in sync with precedent ordnances over the last 30-40 Years in Clearwater County. Our desire is to set the stage for jobs for excavators, concrete contractors, carpenters, electricians, plumbers, etc. in our County, along with an increased tax base as the Freeman Creek area continues to thrive as it provides recreation and getaways for residents of the surrounding area.

submitted, Respectively

wner,

Ed Galloway, private

FD. 5/8" DIA. REBAR W/
ALUM. CAP. MK'D. "PLS 7379"
SEE C.P.F.#191112 ON FILE
WITH CLEARWATER COUNTY.

FD. 5/8" DIA. REBAR W/
ALUM. CAP. MK'D. "PLS 7379"
SEE C.P.F.#191114 ON FILE
WITH CLEARWATER COUNTY.

FD. 5/8" DIA. REBAR W/
ALUM. CAP. MK'D. "PLS 7379"
SEE C.P.F.#191114 ON FILE
WITH CLEARWATER COUNTY.

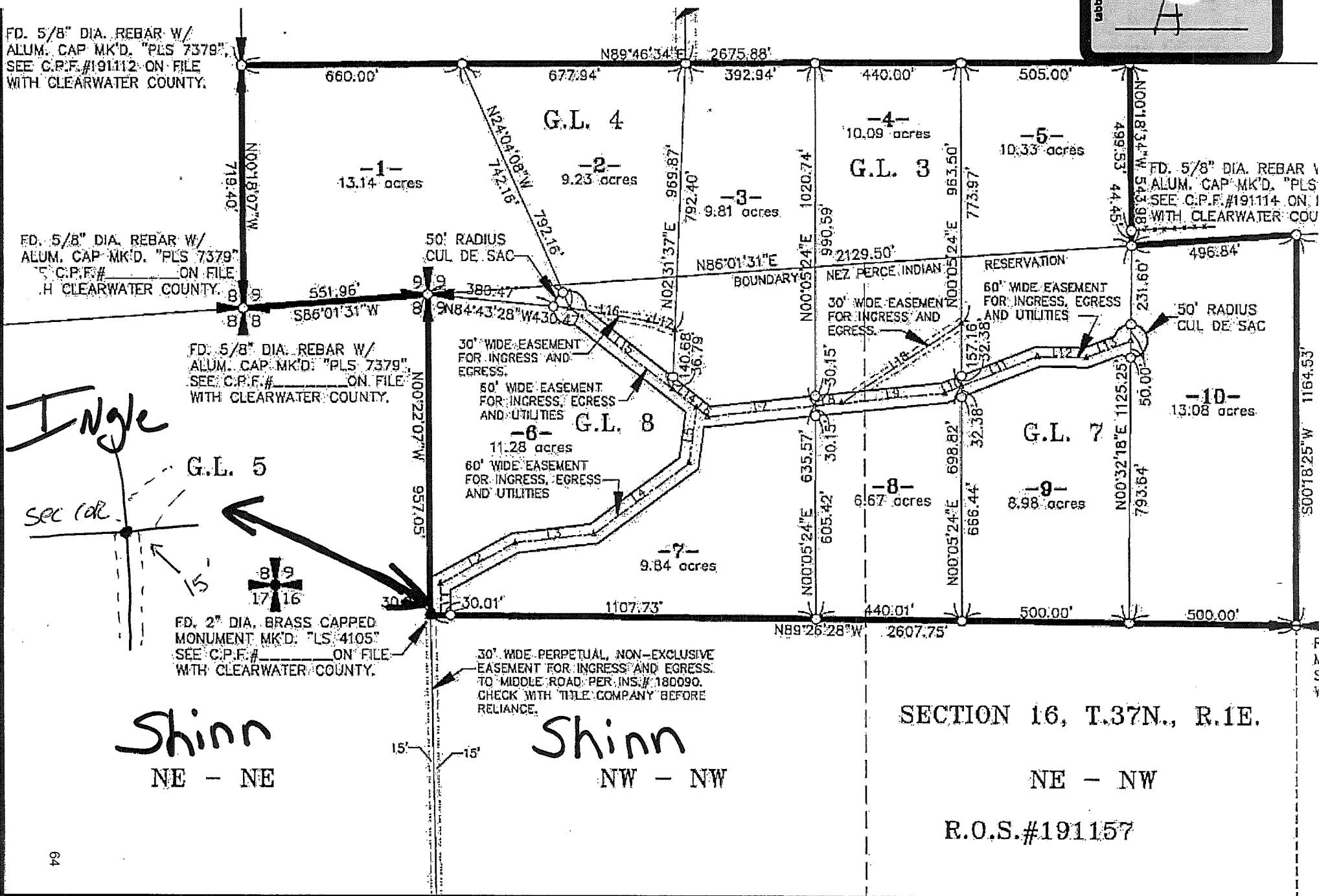
FD. 2" DIA. BRASS CAPPED
MONUMENT MK'D. "LS 4105"
SEE C.P.F.#191115 ON FILE
WITH CLEARWATER COUNTY.

30' WIDE PERPETUAL, NON-EXCLUSIVE
EASEMENT FOR INGRESS AND EGRESS.
TO "MIDDLE ROAD" PER INS.# 180090.
CHECK WITH "TITLE" COMPANY BEFORE
RELIANCE.

SECTION 16, T.37N., R.1E.

NE - NW

R.O.S.#191157



EXHIBIT

tabbles

CONISTOCK

SOUTH FORK
ESTATES

SHINN

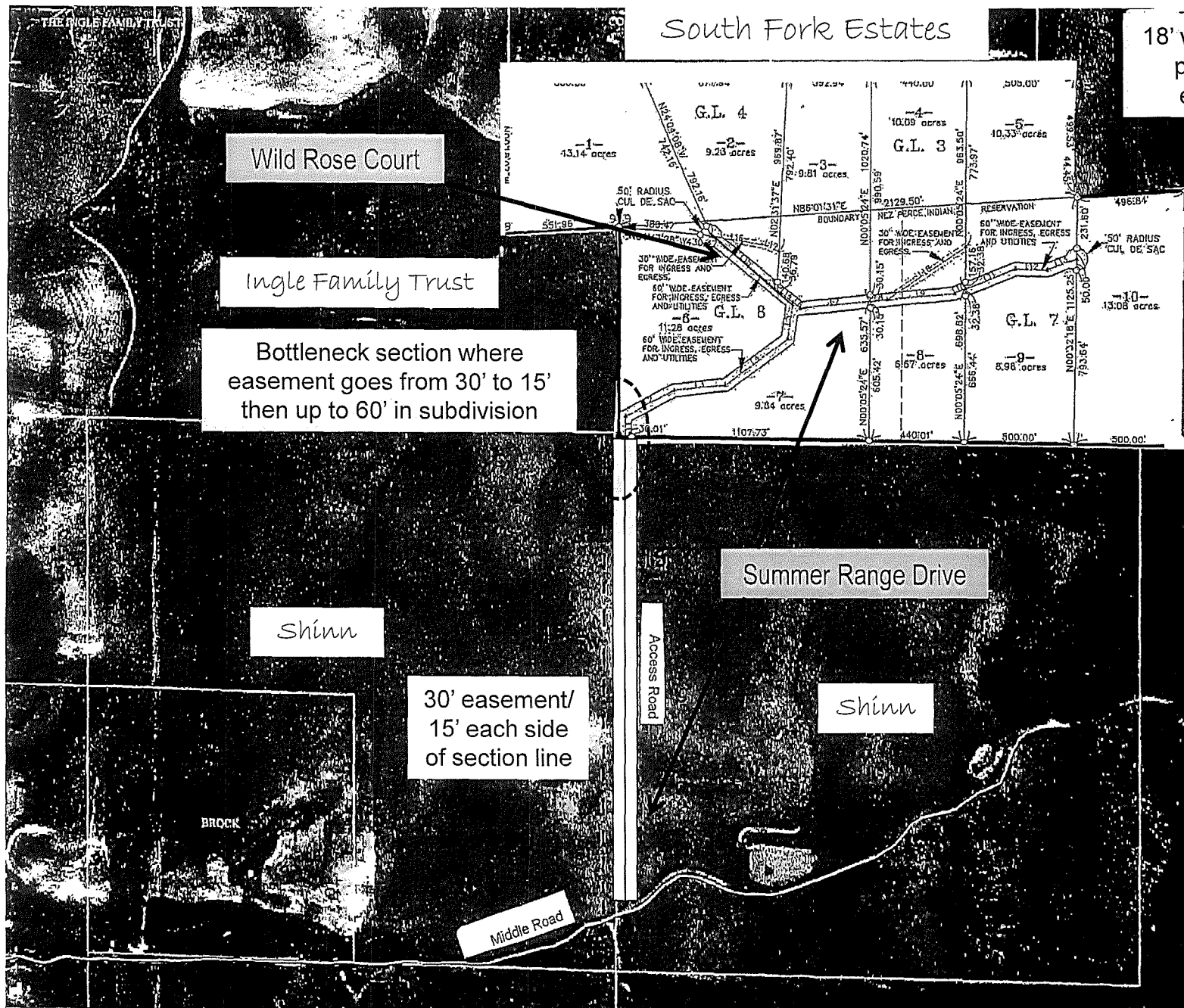
Access Road

Middle Road

SHINN

BLOCK

THE FAMILY TRUST



South Fork Estates

18' wide roads in
plat w/60 ft
easement

Wild Rose Court

Ingle Family Trust

Bottleneck section where
easement goes from 30' to 15'
then up to 60' in subdivision

Summer Range Drive

Shinn

30' easement/
15' each side
of section line

Shinn

Middle Road

(ZV2011-2 South Fork Estates)

180090

GRANT OF EASEMENTS

This Grant of Easements is made and entered into this 21 day of Sept., 1998, by and between H. L. Ogden, a single man, Rural Route 1, Box 63, Lenore, Idaho 83541, Robert J. Brock and Elaine Brock, husband and wife, 2925 Cleveland Hill Road, Roseburg, Oregon 97470, Harold Johnson and Sophia Johnson, husband and wife, in care of, Donald F. Johnson, 2798 Grand View Drive, Clarkston, Washington 99403, Donald F. Johnson and Janet E. Johnson, husband and wife, 2798 Grand View Drive, Clarkston, Washington 99403, Dale Joe Richardson and ^{Brigitte SR.} Bridgette Richardson, husband and wife, P.O. Box 1300, Orofino, Idaho 83544, and Edward J. Galloway and Carole K. Galloway, husband and wife, 4301 Freeman Creek Road, Orofino, Idaho 83544.

WHEREAS, H. L. Ogden is the owner of the following-described real property situate in the situate in the County of Clearwater, State of Idaho, to-wit:

Township 37 North, Range 1 E.B.M., Section 17:
Lots 2, 3, 4, West 6 acres of SE1/4NW1/4, Westerly
86 feet of NE1/4SW1/4, SE1/4SW1/4, SE1/4.

WHEREAS, Robert J. Brock and Elaine Brock are the owners of the following-described real property situate in the County of Clearwater, State of Idaho, to-wit:

Township 37 North, Range 1 E.B.M., Section 17:
SW1/4NE1/4, SE1/4NW1/4 less the West 189 feet,
NE1/4SW1/4 less South 1065 feet of the
West 143 feet, Tax Number 496.

WHEREAS, Harold Johnson and Sophia Johnson are the owners of the following-described real property, situate in the County of Clearwater, State of Idaho, to-wit:

Township 37 North, Range 1 E.B.M., Section 17:
NW1/4NE1/4, NE1/4NE1/4, SE1/4NE1/4.

CLEARWATER LAND TITLE

and was recorded at the request of
H. L. Ogden on this 21 day of Sept., 1998.
Notar Christensen By: [Signature]
Notary Public-Recorder
Clearwater County, Idaho

Return to [Signature]

EXHIBIT

tabbies

A

COPY

WHEREAS, Donald F. Johnson and Janet E. Johnson are the owners of the following-described real property situate in the County of Clearwater, State of Idaho, to-wit:

Township 37 North, Range 1 E.B.M., Section 16:
NW1/4

WHEREAS, Dale Joe Richardson and ^{Brigitte B.R.}~~Bridgette~~ Richardson, husband and wife, are the owners of the following-described real property situate in the County of Clearwater, State of Idaho, to-wit:

Township 37 North, Range 1 E.B.M., Section 15:
W1/2, N1/2NE1/4
Section 22: N1/2NW1/4
Section 14:
NW1/4NW1/4
Section 10: Lots 5 and 6 South of the Reservation Line.

WHEREAS, Edward J. Galloway and Carole K. Galloway, husband and wife, are the owners of the following-described real property situate in the County of Clearwater, State of Idaho, to-wit:

Township 37 North, Range 1 E.B.M., Section 9:
Lots 3 and 4 North of the Reservation Line.
Lots 7 and 8 South of the Reservation Line.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, H. L. Ogden grants to each of the other parties hereto; Robert J. Brock and Elaine Brock, husband and wife, grant to each of the other parties hereto; Harold Johnson and Sophia Johnson, husband and wife, grant unto Donald F. Johnson and Janet E. Johnson, husband and wife, and Dale Joe Richardson and ^{Brigitte B.R.}~~Bridgette~~ Richardson, husband and wife; and Donald F. Johnson and Janet E. Johnson grant unto Dale Joe Richardson and ^{Brigitte B.R.}~~Bridgette~~ Richardson, husband and wife, a perpetual non-exclusive

easement thirty (30) feet in width for ingress and egress to the county road in Section 17, Township 37N, Range 1 E.B.M., over and across the southerly fifteen (15) feet of the NW1/4, the southerly fifteen (15) feet of the SW1/4NE1/4, the southerly fifteen feet of the SW1/4SE1/4NE1/4, the northerly fifteen (15) feet of the SW1/4, the northerly fifteen (15) feet of the NW1/4SE1/4, the northerly fifteen (15) feet of the NW1/4NE1/4SE1/4, fifteen (15) feet on each side of the centerline of an existing road crossing the S1/2SE1/4NE1/4, fifteen (15) feet on each side of the centerline of an existing road crossing the northerly extremity of the N1/2SE1/4NE1/4 and in Section 16, fifteen (15) feet on each side of the centerline of an existing road crossing the NW1/4 of Section 16 to the extent that the description of this easement crosses the real property of the parties, hereto together with a perpetual thirty (30) foot easement for utilities, the centerline of which is the northerly boundary line of the above-described easement for ingress and egress.

FURTHERMORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, H. L. Ogden, Robert J. Brock and Elaine Brock, husband and wife, and Harold Johnson and Sophia Johnson, husband and wife, grant to Edward J. Galloway and Carole K. Galloway, husband and wife, a perpetual non-exclusive easement thirty feet (30') in width for ingress and egress to the county road and Section 17, Township 37 N., Range 1 E.B.M., over and across the southerly fifteen feet (15') of the NW 1/4, the southerly fifteen feet (15') of the SW1/4NE1/4, the southerly fifteen feet (15') of the SW1/4SE1/4NE1/4, the northerly fifteen feet (15') of the SW1/4, the northerly fifteen feet (15') of the NW1/4SE1/4,

northerly fifteen feet (15') of the NW1/4NE1/4SE1/4, the fifteen feet (15') on each side of the centerline of an existing road crossing the S1/2SE1/4NE1/4, fifteen feet (15') on each side of the centerline of an existing road crossing the northerly extremity of the N1/2NE1/4SE1/4 to the extent that the description of this easement crosses the real property of the Grantors together with a perpetual easement thirty feet (30') wide for utilities, the centerline of which is the northerly line of the above-described easement for ingress and egress.

FURTHERMORE, In consideration of One Dollar (\$1.00) and other good and valuable consideration, Harold Johnson and Sophia Johnson, husband and wife, grant to Edward J. Galloway and Carole K. Galloway, husband and wife, a perpetual non-exclusive easement fifteen feet (15') in width across the easterly fifteen feet (15') of the E1/2 of the NE1/4 of Section 17 for ingress and egress to the easterly extremity of the easement for ingress and egress granted above.

FURTHERMORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, Donald F. Johnson and Janet E. Johnson, husband wife, grant to Edward J. Galloway and Carole K. Galloway, husband and wife, a perpetual non-exclusive easement fifteen feet (15') in width for ingress and egress across the westerly fifteen feet (15') of the NW1/4 of Section 16 for ingress and egress to the extremity of the first easement for ingress and egress granted above to Edward J. Galloway and Carole K. Galloway, husband and wife, together with a perpetual thirty foot (30') easement for utilities across the westerly thirty feet (30') of the NW1/4 of Section 16.

The utility easements include, but are not limited to, a grant to Clearwater Power Company (Cooperative) to construct, reconstruct, rephase, repair, operate, and maintain an electric transmission or distribution line or system; to cut and trim trees and shrubbery to the extent necessary to keep them clear of said electric line or system; and to cut down, from time to time, all dead, weak, leaning, or dangerous trees, that are tall enough to strike the wires in falling.


The undersigned agree that all poles, wires, and other facilities, including any main service entrance equipment, installed on the above-described lands at the Cooperative's expense, shall remain the property of the Cooperative, removable at the Cooperative's option, upon termination of service to or on said land.

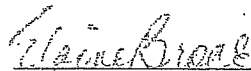
As part of the consideration for the grant of the above-described easements, Donald F. Johnson, Ed Galloway, and Dale Joe Richardson, at their own expense, shall straighten and move the existing road that presently traverses the SW1/4NE1/4, Section 17, so that the same falls within the confines of the easement for ingress and egress granted herein.

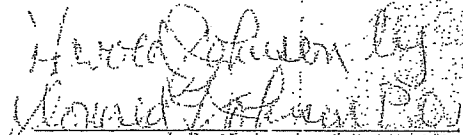
This Grant of Easements is binding upon and inures to the benefit of the heirs, assigns, and successors of the parties hereto, and the easement for ingress and egress shall not be deemed a public right-of-way.

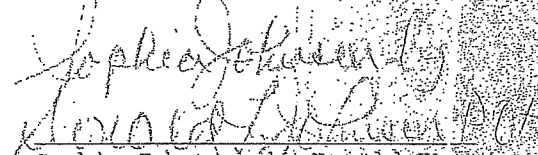
IN WITNESS WHEREOF, the parties have hereunto executed this Grant of Easements on the dates set forth in the following acknowledgments.

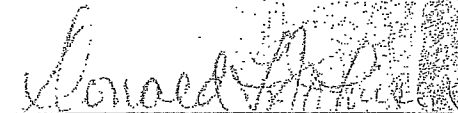
H. L. Ogden

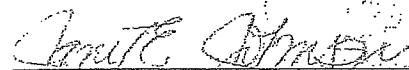

Robert J. Brock

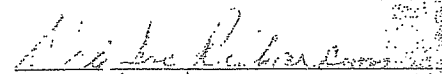

Elaine Brock

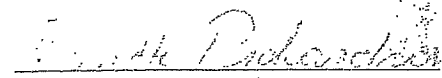

Harold Johnson, by Donald F. Johnson, Power of Attorney

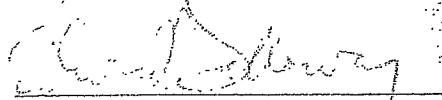

Sophia Johnson, by Donald F. Johnson, Power of Attorney

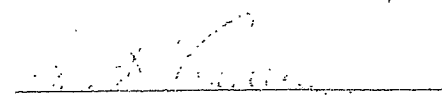

Donald F. Johnson


Janet E. Johnson


Dale Joe Richardson


Bridgette Richardson

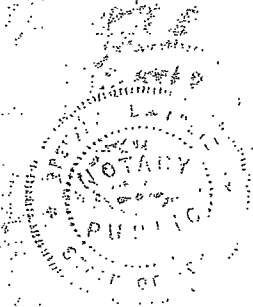

Edward J. Galloway


Carole K. Galloway

STATE OF IDAHO)
 :
County of Clearwater)

On this 15th day of October, 1998, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared H. L. Ogden, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

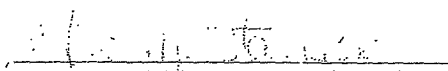
A circular notary seal for Deane L. Burt, Notary Public in and for the State of Idaho. The seal contains the text "DEANE L. BURT", "NOTARY PUBLIC", and "STATE OF IDAHO".
Deane L. Burt
Notary Public in and for the
State of Idaho, residing
at Orofino, therein.
My commission expires: 5/10/99

STATE OF OREGON)
 :
County of Yamhill)

On this 15th day of October, 1998, before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared Robert J. Brock and Elaine Brock, husband and wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.




A rectangular notary seal for Gina M. Standley, Notary Public in and for the State of Oregon. The seal contains the text "GINA M. STANDLEY", "NOTARY PUBLIC", and "STATE OF OREGON".
Gina M. Standley
Notary Public in and for the
State of Oregon, residing
at Lawton, Oregon, therein.
My commission expires:

STATE OF IDAHO)

County of Clearwater)

On this 9th day of March, in the year 1998, before me, a Notary Public in and for the State of Idaho, personally appeared Donald F. Johnson, known or identified to me to be the person whose name is subscribed to the within instrument as the attorney in fact for Harold Johnson and Sophia Johnson and acknowledged to me that he subscribed the names of Harold Johnson and Sophia Johnson thereto as principals, and his own name as attorney in fact.


Denise J. Butz
Notary Public in and for the
State of Idaho, residing at
Orofino, therein.
My commission expires: 5/10/99

STATE OF IDAHO)

County of Clearwater)

On this 9th day of March, 1998, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Donald F. Johnson and Janet E. Johnson, husband and wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

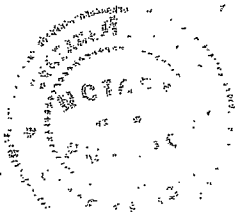
Denise J. Butz
Notary Public in and for the
State of Idaho, residing
at Orofino, therein.
My commission expires: 5/10/99

STATE OF IDAHO)

County of Clearwater)

On this 20 day of October, 1998, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Dale Joe Richardson and Bridgette Richardson, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]

Notary Public in and for the
State of Idaho, residing
at Orofino, therein.

My commission expires: 5/10/99

STATE OF IDAHO)

County of Clearwater)

On this 27th day of October, 1998, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Edward J. Galloway and Carole K. Galloway, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public in and for the
State of Idaho, residing
at Orofino, therein.
My commission expires:

NOTIFICATIONS

Adjacent landowners within 300ft..... 7

Planning & Zoning Agendas..... 8

Affidavits of Publication 9

Jul

Application	First	Last	Address	City	State	Zip Code
ZV2011-2	Ed & Carole	Galloway	524 Galloway Dr	Lenore	ID	83541-5107
SUB060096	Donald	Ingle	3592 Freeman Creek Rd	Lenore	ID	83541-5098
	Marshall & Rhonda	Comstock	932 N Mountain View Rd	Moscow	ID	83843-9233
	State of Idaho		PO Box 83720	Boise	ID	83720-0050
	Edward & Donilee	Shinn	671 Chief Sampson Rd	Toppenish	WA	98948-9690
	Terry Golding					
	Golding Surveying & Mapping		PO Box 1818	Lewiston	ID	83501
	Garry W. Jones					
	JONES, BROWER & CALLERY, PLLC		PO Box 854	Lewiston	ID	83501

March

Application	First	Last	Company	Address	City	State	Zip Code
ZV2011-2	Ed & Carole	Galloway		524 Galloway Dr	Lenore	ID	83541-5107
SUB060096	Donald	Ingle		3592 Freeman Creek Rd	Lenore	ID	83541-5098
	Marshall & Rhonda	Comstock		932 N Mountain View Rd	Moscow	ID	83843-9233
	State of Idaho			PO Box 83720	Boise	ID	83720-0050
	Edward & Donilee	Shinn		671 Chief Sampson Rd	Toppenish	WA	98948-9690
	Terry	Golding	Golding Surveying & Mapping	PO Box 1818	Lewiston	ID	83501
	Garry W.	Jones	JONES, BROWER & CALLERY, PLLC	PO Box 854	Lewiston	ID	83501
	Barbara & Homer	Marvin		6633 Cougar Ridge Dr	Lewiston	ID	83501-7853
	Gary & Bonnie	Ogden		258 Silver Ln	Lenore	ID	83541-5104

Angu

Application	First	Last	Company	Address	City	State	Zip Code
ZV2011-2	Ed & Carole	Galloway		524 Galloway Dr	Lenore	ID	3541-5107
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	State of Idaho			PO Box 83720	Boise	ID	3720-0050
	Edward & Donilee	Shinn		671 Chief Sampson Rd	Toppenish	WA	8948-9690
	Terry	Golding	Golding Surveying & Mapping	PO Box 1818	Lewiston	ID	83501
	Garry W.	Jones	JONES, BROWER & CALLERY, PLLC	PO Box 854	Lewiston	ID	83501
	Barbara & Homer	Marvin		6633 Cougar Ridge Dr	Lewiston	ID	3501-7853
	Gary & Bonnie	Ogden		258 Silver Ln	Lenore	ID	3541-5104



CLEARWATER COUNTY
PLANNING & ZONING COMMISSION AGENDA
Tuesday, February 22, 2011, at 6:30 p.m.

*Courtroom 1 in the Clearwater County Courthouse
150 Michigan Avenue, Orofino, Idaho*

Notice is hereby given that the Clearwater County Planning and Zoning Commission will hold a public hearing **Tuesday, February 22, 2011, at 6:30 p.m.** The Planning and Zoning reports and recommendations before the Board of County Commissioners of Clearwater County public hearing for their final decision will be held on **Monday, March 07, 2011, at 10:00 a.m.** in the Commissioner's Office at the Clearwater County Courthouse. Oral testimony will be received at the open hearings. Speakers may be limited to five minutes and may not relinquish their time.

Written comments are accepted and need to be directed to the Building & Planning Department, 150 Michigan Avenue, PO Box 586, Orofino, ID, 83544, faxed to (208) 476-8994, or emailed to bp@clearwatercounty.org. For any other questions or concerns, contact our office at (208) 476-4815.

Any person needing special accommodations to participate in the above noticed meeting should contact the Building & Planning Department 5 days prior to the meeting at (208) 476-4815 and address.

- **Approval of agenda**
- **Approval of January 18, 2011, minutes**

Public Hearings/Unfinished Business

- **(ZV2011-2)** A Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:
 - Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
 - Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
 - Set aside the requirement to dedicate the access road to public use as required by § B.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

- **(SUB060096)** Final plat stage of the full platting procedure for Hidden Valley Subdivision re-named South Fork Estates, a Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots: Lot 1) 13.14 acres, Lot 2) 9.23 acres, Lot 3) 9.81 acres, Lot 4) 10.09 acres, Lot 5) 10.33 acres, Lot 6) 11.28 acres, Lot 7) 9.84 acres, Lot 8) 6.67 acres, Lot 9) 8.98 acres, Lot 10) 13.08 acres. This is a continuation of the 17 November 2008 public hearing. This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

Full text and maps for agenda items are available at the Building and Planning Department

Sincerely,

A handwritten signature in cursive script that reads "Bobbi Kaufman".

Bobbi Kaufman, Clearwater County Planning and Zoning Administrator



CLEARWATER COUNTY
PLANNING & ZONING COMMISSION AGENDA
Monday, March 21, 2011, at 6:30 p.m.

*Courtroom 1 in the Clearwater County Courthouse
150 Michigan Avenue, Orofino, Idaho*

Notice is hereby given that the Clearwater County Planning and Zoning Commission will hold a public hearing **Monday, March 21, 2011, at 6:30 p.m.** The Planning and Zoning reports and recommendations before the Board of County Commissioners of Clearwater County public hearing for their final decision will be held on **Monday, April 4, 2011, at 10:00 a.m.** in the Commissioner's Office at the Clearwater County Courthouse. Oral testimony will be received at the open hearings. Speakers may be limited to five minutes and may not relinquish their time.

Written comments are accepted and need to be directed to the Building & Planning Department, 150 Michigan Avenue, PO Box 586, Orofino, ID, 83544, faxed to (208) 476-8994, or emailed to bp@clearwatercounty.org. For any other questions or concerns, contact our office at (208) 476-4815.

Any person needing special accommodations to participate in the above noticed meeting should contact the Building & Planning Department 5 days prior to the meeting at (208) 476-4815 and address.

- **Approval of agenda**
- **Approval of January 18, 2011, minutes** (Note: February hearing was cancelled due to weather)

Public Hearings

- **(ZV2011-2)** A Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:
 - Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
 - Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
 - Set aside the requirement to dedicate the access road to public use as required by § B.

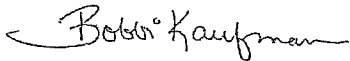
This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

- **(SUB060096)** Final plat stage of the full platting procedure for Hidden Valley Subdivision re-named Southfork Estates, a Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots: Lot 1) 13.14 acres, Lot 2) 9.23 acres, Lot 3) 9.81 acres, Lot 4) 10.09 acres, Lot 5) 10.33 acres, Lot 6) 11.28 acres, Lot 7) 9.84 acres, Lot 8) 6.67 acres, Lot 9) 8.98 acres, Lot 10) 13.08 acres. This is a continuation of the 17 November 2008 public hearing. This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

- **(SD2011-2)** A Class S Subdivision Simple Subdivision request by Gayle Marek to divide 22.21 acres into 2 lots. Lot A 10.74 acres, Lot B 11.47 acres. This property is in Section 02, Township 37 North, Range 01 West, located along Daisey Rd, Kendrick, ID-Clearwater County; Zoned Low Density Rural District F-1.
- **(CU2011-1)** A Conditional Use request by Sacarias and Lilia Guitron, owners of Fiesta En Jalisco, to allow the establishment of an 8' x 8' billboard near Triple T Storage along Highway 12. This property is in Section 33, Township 37 North, Range 01 East, located at 39432 Hwy 12, Orofino, ID-Clearwater County; Zoned Light Industrial District M-1.

Full text and maps for agenda items are available at the Building and Planning Department

Sincerely,



Bobbi Kaufman,
Clearwater County Planning and Zoning Administrator



CLEARWATER COUNTY
PLANNING & ZONING COMMISSION AGENDA
Monday, August 15, 2011, at 6:30 p.m.
*Courtroom 1 in the Clearwater County Courthouse
150 Michigan Avenue, Orofino, Idaho*

Notice is hereby given that the Clearwater County Planning and Zoning Commission will hold a public hearing **Monday, August 15, 2011, at 6:30 p.m.** The Planning and Zoning report before the Board of County Commissioners of Clearwater County public hearing will be held on **Monday, August 29, 2011, at 10:00 a.m.** in the Commissioner's Office at the Clearwater County Courthouse. Oral testimony will be received at the open hearing. Speakers may be limited to five minutes and may not relinquish their time.

Written comments are accepted and need to be directed to the Building & Planning Department, 150 Michigan Avenue, PO Box 586, Orofino, ID, 83544, faxed to 208-476-8994, or emailed to bp@clearwatercounty.org. For any other questions or concerns, contact our office at 208-476-4815.

Any person needing special accommodations to participate in the above noticed meeting should contact the Building & Planning Department 5 days prior to the meeting at (208) 476-4815 and address.

- **Approval of agenda**
- **Approval of July 18, 2011, minutes**

Public Hearing

- **(ZV2011-2)** A Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval and final approval is pending following this hearing. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:
 - Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
 - Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
 - Set aside the requirement to dedicate the access road to public use as required by § B.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

This application was heard and approved March 21, 2011, and appealed to the Board of County Commissioners of Clearwater County. The ultimate conclusion of the Clearwater County Commissioners is to overturn Planning & Zoning decision and to remand the issue of undue hardship back to Planning & Zoning Commission with specific instructions to focus and clearly define whether or not it is an undue hardship in order to grant a variance. Also, the Board reserved the judgment of every other matter contained in this appeal except the undue hardship question that is remanded back to the P&Z Commission.

Full text and maps for agendum items are available at the Building and Planning Department

Sincerely,

Bobbi Kaufman

Bobbi Kaufman, Zoning Administrator

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Clearwater)

CLOANN MCNALL

being first duly sworn in, on oath, deposes and says:

That I am and at all times herein mentioned have been a citizen of the United States and of the State of Idaho, over 21 years of age, and that I am not a party to nor interested in the above entitled proceeding; that I am and at all times herein mentioned have been the Editor, Foreman, of THE CLEARWATER TRIBUNE; that said Clearwater Tribune is a newspaper of general circulation, printed and published weekly at Orofino, in the County of Clearwater and State of Idaho; that the Clearwater Tribune has been continuously and uninterruptedly published in Clearwater County, Idaho, during the period of seventy-eight consecutive weeks prior to the first publication of attached copy of:

Clearwater County Planning & Zoning FEB. 22 HEARING

which the annexed is a full, true and correct printed copy, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for a period of one week, commencing on the 3rd day of February 2011 and ending on the 3rd day of February 2011.

STATE OF IDAHO)
)
COUNTY OF CLEARWATER)

On this 3rd day of February in the year of 2011, before me, a Notary Public, personally appeared

CloAnn McNall

known or identified to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Marcie Stanton

Notary Public for Idaho
Resident at Orofino, Idaho
My commission expires: 5-16-14

CLEARWATER COUNTY PLANNING & ZONING COMMISSION AGENDA

Tuesday, February 22, 2011,
at 6:30 p.m.

Courtroom 1 in the

Clearwater County Courthouse

150 Michigan Avenue, Orofino, Idaho

Notice is hereby given that the Clearwater County Planning and Zoning Commission will hold a public hearing Tuesday, February 22, 2011, at 6:30 p.m. The Planning and Zoning reports and recommendations before the Board of County Commissioners of Clearwater County public hearing for their final decision will be held on Monday, March 07, 2011, at 10:00 a.m. in the Commissioner's Office at the Clearwater County Courthouse. Oral testimony will be received at the open hearings. Speakers may be limited to five minutes and may not relinquish their time.

Written comments are accepted and need to be directed to the Building & Planning Department, 150 Michigan Avenue, PO Box 586, Orofino, ID, 83544, faxed to (208) 476-8994, or emailed to bp@clearwatercounty.org. For any other questions or concerns, contact our office at (208) 476-4815.

Any person needing special accommodations to participate in the above noticed meeting should contact the Building & Planning Department 5 days prior to the meeting at (208) 476-4815 and address.

Approval of agenda

Approval of January 18, 2011, minutes

Public Hearings/Unfinished Business

(ZV2011-2) A Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096.

SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and proposed subdivision. The details of variance request follow:

- Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
- Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
- Set aside the requirement to dedicate access road to public use as required by B. This property is located in Section 9, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

(SUB060096) Final plat stage of full platting procedure for Hidden Valley Subdivision re-named Southfork Estate a Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots: Lot 1) 13.14 acres, Lot 2) 9.23 acres, Lot 3) 9.81 acres, Lot 4) 10.11 acres, Lot 5) 10.33 acres, Lot 6) 11.11 acres, Lot 7) 9.84 acres, Lot 8) 6.67 acres, Lot 9) 8.98 acres, Lot 10) 13.08 acres. This is a continuation of the 17 November 2008 public hearing. This property located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

Full text and maps for agenda items are available at the Building and Planning Department

Bobbi Kaufman, Clearwater County Planning and Zoning Administrator

02-03-11

MARCIE STANTON
NOTARY PUBLIC
STATE OF IDAHO

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Clearwater)

CLOANN MCNALL

being first duly sworn in, on oath, deposes and says:

That I am and at all times herein mentioned have been a citizen of the United States and of the State of Idaho, over 21 years of age, and that I am not a party to nor interested in the above entitled proceeding; that I am and at all times herein mentioned have been the Editor, Foreman, of THE CLEARWATER TRIBUNE; that said Clearwater Tribune is a newspaper of general circulation, printed and published weekly at Orofino, in the County of Clearwater and State of Idaho; that the Clearwater Tribune has been continuously and uninterruptedly published in Clearwater County, Idaho, during the period of seventy-eight consecutive weeks prior to the first publication of attached copy of:

Clearwater County Planning & Zoning MARCH 21 HEARING

of which the annexed is a full, true and correct printed copy, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for a period of one week, commencing on the 3rd day of March 2011 and ending on the 3rd day of March 2011.

STATE OF IDAHO)
)
COUNTY OF CLEARWATER)

On this 3rd day of March in the year of 2011, before me, a Notary Public, personally appeared

CloAnn McNall
known or identified to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Marcie Stanton
Notary Public for Idaho
Resident at Orofino, Idaho
My commission expires: 5-16-14

CLEARWATER COUNTY PLANNING & ZONING COMMISSION AGENDA Monday, March 21, 2011, at 6:30 p.m.

Courtroom 1 in the
Clearwater County Courthouse
150 Michigan Avenue, Orofino, Idaho

Notice is hereby given that the Clearwater County Planning and Zoning Commission will hold a public hearing **Monday, March 21, 2011, at 6:30 p.m.** The Planning and Zoning reports and recommendations before the Board of County Commissioners of Clearwater County public hearing for their final decision will be held on **Monday, April 4, 2011, at 10:00 a.m.** in the Commissioner's Office at the Clearwater County Courthouse. Oral testimony will be received at the open hearings. Speakers may be limited to five minutes and may not relinquish their time.

Written comments are accepted and need to be directed to the Building & Planning Department, 150 Michigan Avenue, PO Box 586, Orofino, ID, 83544, faxed to (208) 476-8994, or emailed to bp@clearwatercounty.org. For any other questions or concerns, contact our office at (208) 476-4815.

Any person needing special accommodations to participate in the above noticed meeting should contact the Building & Planning Department 5 days prior to the meeting at (208) 476-4815 and address.

- **Approval of agenda**
- **Approval of January 18, 2011, minutes** (Note: February hearing was cancelled due to weather)

Public Hearings

- **(ZV2011-2)** A Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

- Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property

line;

- Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
- Set aside the requirement to dedicate the access road to public use as required by § B.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

- **(SUB060096)** Final plat stage of full platting procedure for Hidden Valley Subdivision re-named Southfork Estate a Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots: Lot 1) 13.14 acres, Lot 2) 9.23 acres, Lot 3) 9.81 acres, Lot 4) 10.11 acres, Lot 5) 10.33 acres, Lot 6) 11.11 acres, Lot 7) 9.84 acres, Lot 8) 6.67 acres, Lot 9) 8.98 acres, Lot 10) 13.08 acres. This is a continuation of the 17 November 2008 public hearing. This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

- **(SD2011-2)** A Class S Subdivision Simple Subdivision request by Gay Marek to divide 22.21 acres into 2 lots: Lot A 10.74 acres, Lot B 11.47 acres. This property is in Section 02, Township 37 North, Range 01 West, located along Daisy Rd, Kendrick, ID-Clearwater County; Zoned Low Density Rural District F-1.

- **(CU2011-1)** A Conditional Use request by Sacarias and Lilia Guitron, owners of Fiesta En Jalisco, to allow the establishment of an 8' x 8' billboard near Trip T Storage along Highway 12. This property is in Section 33, Township 37 North, Range 01 East, located at 39423 Hwy 12, Orofino, ID-Clearwater County; Zoned Light Industrial District M-1.

Full text and maps for agenda items are available at the Building and Planning Department

Bobbi Kaufman, Clearwater County Planning and Zoning Administrator

3-3-11

MARCIE STANTON
NOTARY PUBLIC
STATE OF IDAHO

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Clearwater)

CLOANN MCNALL

being first duly sworn in, on oath, deposes and says:

That I am and at all times herein mentioned have been a citizen of the United States and of the State of Idaho, over 21 years of age, and that I am not a party to nor interested in the above entitled proceeding; that I am and at all times herein mentioned have been the Editor, Foreman, of THE CLEARWATER TRIBUNE; that said Clearwater Tribune is a newspaper of general circulation, printed and published weekly at Orofino, in the County of Clearwater and State of Idaho; that the Clearwater Tribune has been continuously and uninterruptedly published in Clearwater County, Idaho, during the period of seventy-eight consecutive weeks prior to the first publication of attached copy of:

Clearwater County Planning & Zoning AUG. 15 HEARING

of which the annexed is a full, true and correct printed copy, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for a period of one week, commencing on the 28th day of July 2011 and ending on the 28th day of July 2011.

STATE OF IDAHO)
)
COUNTY OF CLEARWATER)

On this 28th day of July in the year of 2011, before me, a Notary Public, personally appeared

Cloann McNall
known or identified to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Notary Public for Idaho
Resident at Orofino, Idaho
My commission expires: 5-16-14

MARCIE STANTON
NOTARY PUBLIC
STATE OF IDAHO

CLEARWATER COUNTY PLANNING & ZONING COMMISSION AGENDA Monday, August 15, 2011, at 6:30 p.m.

Courtroom 1 in the
Clearwater County Courthouse
150 Michigan Avenue, Orofino, Idaho

Notice is hereby given that the Clearwater County Planning and Zoning Commission will hold a public hearing Monday, August 15, 2011 at 6:30 p.m. The Planning and Zoning report before the Board of County Commissioners of Clearwater County public hearing will be held on Monday, August 29, 2011, at 10:00 a.m. in the Commissioner's Office at the Clearwater County Courthouse. Oral testimony will be received at the open hearing. Speakers may be limited to five minutes and may not relinquish their time.

Written comments are accepted and need to be directed to the Building & Planning Department, 150 Michigan Avenue, PO Box 586, Orofino, ID, 83544, faxed to 208-476-8994, or emailed to bp@clearwatercounty.org. For any other questions or concerns, contact our office at 208-476-4815.

Any person needing special accommodations to participate in the above noticed meeting should contact the Building & Planning Department 5 days prior to the meeting at (208) 476-4815 and address.

- Approval of agenda
- Approval of July 18, 2011 minutes
Public Hearings

- (ZV2011-2) A Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval and final approval is pending following this hearing. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

- Change right-of-way width from 60

Legals

CLEARWATER COUNTY PLANNING & ZONING COMMISSION AGENDA

**Monday, August 15, 2011,
at 6:30 p.m.**

*Courtroom 1 in the
Clearwater County Courthouse
150 Michigan Avenue, Orofino, Idaho*

Notice is hereby given that the Clearwater County Planning and Zoning Commission will hold a public hearing **Monday, August 15, 2011 at 6:30 p.m.** The Planning and Zoning report before the Board of County Commissioners of Clearwater County public hearing will be held on **Monday, August 29, 2011, at 10:00 a.m.** in the Commissioner's Office at the Clearwater County Courthouse. Oral testimony will be received at the open hearing. Speakers may be limited to five minutes and may not relinquish their time.

Written comments are accepted and need to be directed to the Building & Planning Department, 150 Michigan Avenue, PO Box 586, Orofino, ID, 83544, faxed to 208-476-8994, or emailed to bp@clearwatercounty.org. For any other questions or concerns, contact our office at 208-476-4815.

Any person needing special accommodations to participate in the above noticed meeting should contact the Building & Planning Department 5 days prior to the meeting at (208) 476-4815 and address.

- **Approval of agenda**
- **Approval of July 18, 2011 minutes**

Public Hearings

- **(ZV2011-2)** A Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval and final approval is pending following this hearing. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

- Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
- Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
- Set aside the requirement to dedicate the access road to public use as required by § B.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID- Clearwater County; Zoned Low Density Rural District F-1.

This application was heard and approved March 21, 2011, and appealed to the Board of County Commissioners of Clearwater County. The ultimate conclusion of the Clearwater County Commissioners is to overturn Planning & Zoning decision and to remand the issue of undue hardship back to Planning & Zoning Commission with specific instructions to focus and clearly define whether or not it is an undue hardship in order to grant a variance. Also, the Board reserved the judgment of every other matter contained in this appeal except the undue hardship question that is remanded back to the P&Z Commission.

*Full text and maps for agenda items
are available at the Building
and Planning Department*

Bobbi Kaufman, Zoning Administrator

7-28-11c

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Clearwater)

CLOANN MCNALL

being first duly sworn in, on oath, deposes and says:

That I am and at all times herein mentioned have been a citizen of the United States and of the State of Idaho, over 21 years of age, and that I am not a party to nor interested in the above entitled proceeding; that I am and at all times herein mentioned have been the Editor, Foreman, of THE CLEARWATER TRIBUNE; that said Clearwater Tribune is a newspaper of general circulation, printed and published weekly at Orofino, in the County of Clearwater and State of Idaho; that the Clearwater Tribune has been continuously and uninterruptedly published in Clearwater County, Idaho, during the period of seventy-eight consecutive weeks prior to the first publication of attached copy of:

Clearwater County Commissioners NOTICE OF OCT. 3 HEARING

of which the annexed is a full, true and correct printed copy, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for a period of one week, commencing on the 8th day of September 2011 and ending on the 8th day of September 2011.

STATE OF IDAHO)
)
COUNTY OF CLEARWATER)

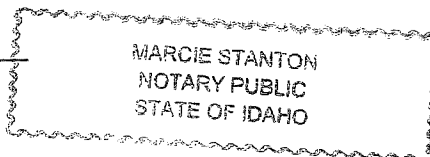
On this 8th day of September in the year of 2011, before me, a Notary Public, personally appeared

CloAnn McNall

known or identified to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Marcie Stanton

Notary Public for Idaho
Resident at Orofino, Idaho
My commission expires: 5-16-14



NOTICE OF HEARING

Notice is hereby given that the Board of County Commissioners will hold a public hearing on Monday, October 3, 2011 at 10:00 A.M. in the Clearwater County Commissioner's Office, Clearwater County Courthouse, 150 Michigan Avenue, Orofino, Idaho.

The purpose of this hearing is to consider an appeal by Garry Jones, Attorney representing Edward L. & Donilee E. Shinn. Mr. Jones is appealing the decision by the Planning & Zoning Commission at their August 15, 2011 meeting. The P&Z Commission granted approval of the Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

In compliance with Americans with Disabilities Act, anyone requesting reasonable accommodations may contact Carrie Bird at 476-5615 one-week prior to the meeting.

Board of County Commissioners.
Clearwater County, Idaho
Don Ebert, Chairman
Carrie Bird, Clerk
By Cindy Barnett, Deputy

9-8-11c

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Clearwater)

CLOANN MCNALL

being first duly sworn in, on oath, deposes and says:

That I am and at all times herein mentioned have been a citizen of the United States and of the State of Idaho, over 21 years of age, and that I am not a party to nor interested in the above entitled proceeding; that I am and at all times herein mentioned have been the Editor, Foreman, of THE CLEARWATER TRIBUNE; that said Clearwater Tribune is a newspaper of general circulation, printed and published weekly at Orofino, in the County of Clearwater and State of Idaho; that the Clearwater Tribune has been continuously and uninterruptedly published in Clearwater County, Idaho, during the period of seventy-eight consecutive weeks prior to the first publication of attached copy of:

Clearwater County Commissioners
DEC. 12 HEARING

of which the annexed is a full, true and correct printed copy, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for a period of one week, commencing on the 10th day of November 2011 and ending on the 10th day of November 2011.

STATE OF IDAHO)
)
COUNTY OF CLEARWATER)

On this 10th day of November in the year of 2011, before me, a Notary Public, personally appeared

Cloann McNall

known or identified to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Notary Public for Idaho
Resident at Orofino, Idaho
My commission expires: 5-16-14

NOTICE OF HEARING

Notice is hereby given that the Board of County Commissioners will hold a public hearing on Monday, December 12, 2011 at 10:00 A.M. in the Clearwater County Commissioner's Office, Clearwater County Courthouse, 150 Michigan Avenue, Orofino, Idaho.

The purpose of this hearing is to consider recommendation from the P&Z Commission on the following Subdivision request;

(SUB060096) Final plat stage of the full platting procedure for Hidden Valley Subdivision re-named Southfork Estates, a Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots: Lot 1) 13.14 acres, Lot 2) 9.23 acres, Lot 3) 9.81 acres, Lot 4) 10.09 acres, Lot 5) 10.33 acres, Lot 6) 11.28 acres, Lot 7) 9.84 acres, Lot 8) 6.67 acres, Lot 9) 8.98 acres, Lot 10) 13.08 acres. This is a continuation of the 17 November 2008 public hearing. This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

The P&Z Commission granted approval of the Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096 at the August 15, 2011 meeting.

In compliance with Americans with Disabilities Act, anyone requesting reasonable accommodations may contact Carrie Bird at 476-5615 one-week prior to the meeting.

Board of County Commissioners.
Clearwater County, Idaho
Don Ebert, Chairman
Carrie Bird, Clerk
By Cindy Barnett, Deputy

11-10-11c

MARCIE STANTON
NOTARY PUBLIC
STATE OF IDAHO

REPORTS, EXHIBITS, FINDINGS

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CLEARWATER COUNTY BUILDING & PLANNING
 150 Michigan Ave. • PO Box 586 • Orofino, ID 83544
 (208) 476-4815 • Fax (208) 476-8994 • bp@clearwatercounty.org

**IN THE MATTER OF ZV2011-2 STAFF REPORT
 OF THE BUILDING & PLANNING ADMINISTRATOR FOR SOUTHFORK ESTATES**

TYPE OF REQUEST & BACKGROUND ATTACHMENT

Mr. Edward and Mrs. Carole Galloway [524 Galloway Dr. Lenore, ID 83541-5107] are requesting variance (ZV2011-2) to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

- Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
- Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
- Set aside the requirement to dedicate the access road to public use as required by § B.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

ORDINANCE STANDARDS

The following Clearwater County Subdivision Ordinance standards were considered by the Commission in deciding this request:

1. CCSO Article III.A requires that an application be submitted.
2. CCSO Article III.B requires that a fee be paid.
3. CCSO Article IV § D.2 requires an access road have a sixty (60) foot right-of-way.
4. CCSO Article IV § D.4.d requires that the minimum surfaced or finished width for a street or access road be twenty-four (24) feet.
5. CCSO Article IV § B requires that all streets be dedicated to public use.
6. CCSO Article VIII § B.1 requires that there are such special circumstances or conditions affecting the property that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable and cause and undue hardship.
7. CCSO Article VIII § B.2 requires that strict compliance with the requirements of the Ordinance would result in extraordinary topography, or such other conditions would result in inhibiting the achievement of the objectives of the Ordinance.

8. CCSO Article VIII § B.3 requires that the granting of the specified variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated.
9. CCSO Article VIII § B.4 requires that such variance will not violate the provisions of the Idaho Code.
10. CCSO Article VIII § B.5 requires that such variance will not have the effect of nullifying the interest and purpose of this Ordinance and the Comprehensive Plan.

STAFF FINDINGS

A staff report was completed February 4, 2011. Ordinance standards providing the basis of this request are as follow:

1. A completed application, Grant of Easement, and written response was submitted January 11, 2011. The proper fee was paid.
2. Agenda was published February 3, 2011, in the Clearwater Tribune.
3. Exhibit A-Site plan shows access road (name TBD) providing access from county road Middle Road to Southfork Estates as an eighteen (18) foot wide surfaced road with a thirty (30) foot right-of-way width except where the actual property line between Ingle and Galloway meet, then it is only fifteen (15) feet at this intersection into the subdivision.
4. Email/written response received from Ed Galloway [freemancreek@cpcinternet.com] on January 20, 2011, for his variance request:
 - a. The relatively flat farm land terrain of the entire distance of this access (R/W) for approx. 2000' lends it's self to easily accommodating an 18' year around road way as will be built on the existing 30' deeded R/W. I need a variance from the currently required 60' to the existing 30' because this is a historical easement and also provides adequate space to install an 18' all weather road as was approved inside the said subdivision in the original approved prelim plat. Also, I would like to point out there is an additional 15' R/W to the east and adjoining the 30' R/W reserved for utilities where I plan an overhead power line.
 - b. In this situation (a low density rural subdivision) the county ordinance we are applying whose basic tenants were adopted in the mid 70's does not take into account the growth of Rural Clearwater County, it talks about streets, arterials streets, alleys etc. As a land developer we must use variances to make the subs conform to an outdated ordinance. As we are doing in this situation we have to right mistakes made in the original approved plat.
 - c. The access road addressed in this variance was determined not to need a variance during initial public discussions as it is exterior of the main sub. To try and correct these mistakes I am seeking a variance of the R/W from 60' to 30' in width, finished road width from 24' to 18', and a reduction from the 30'x18' variance reductions to 15' at the actual property line(bottleneck) for an infinitesimal distance. These variances do not change actual on the ground

specs on the planned sub. The public welfare is not impacted at all since the changes will not have an impact on emergency vehicles. Nor will it impact other owners in the area as the design and implementation is entirely within parameters of the deeded R/W. and the original (approved) plat. Carole and I are doing this low density sub with applicable CC&Rs to limit impact on the neighbors both visually and physically.

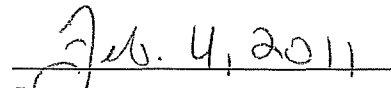
- d. I have been assured by the county attorney and planning administrator that this request does not violate State Codes, it deals with county ordinances which can, by ordinance, be varied to fit unaddressed situations.
 - i. Variance (VAR060204) to vary the interior roads of the subdivision from twenty-four (24) feet to eighteen (18) feet was approved at the November 20, 2006, Planning and Zoning hearing.
 - e. These variances are in sync with precedent ordinances over the last 30-40 years in Clearwater County. Our desire is to set the stage for jobs for excavators, concrete contractors, carpenters, electricians, plumbers, etc. in our county, along with an increased tax base as the Freeman Creek area continues to thrive as it provides recreation and getaways for residents of the surrounding area.
5. On February 2, 2011, Rob Simon, Clearwater County Road and Bridge Department Supervisor, and Bobbi Kaufman, Clearwater County Building and Planning Department Administrator, discussed the proposed access road, past conditions set, and the variance being requested and found the following:
- a. The proposed access road built as an 18' surface on the existing 30' easement would be suffice for this access road; and
 - b. The conditions set in the past would need to be done and approved before the recording of the final plat.
6. Exhibit B-Email sent February 4, 2011, from Rob Simon [ccrb@orofino-id.com] regarding the road connecting the Middle Road to the proposed subdivision:
- a. Thursday, February 3, 2011, I was unable to access Mr. Galloway's road for an up-to-date inspection due to road conditions.
 - b. As previously reported, in general the road is constructed within county specifications, with the following exceptions:
 - i. Cut banks need to be re-sloped to a 2:1 slope to alleviate soil erosion and ditch sloughing.
 - ii. All culverts need to be 18" minimum
 - iii. Realignment of approach to Middle Road to achieve a more 90 degree angle approach.

- c. Due to the general lay of the land, the lack of horizontal curves and minimal vertical curves, it is my opinion that the road as constructed, with an 18' driving surface, would be adequate.
7. The request would be the minimum variance to alleviate the condition because of the standards of the easement.
8. All circumstances for granting a variance exist.
9. Property is not within an area of city impact.

STAFF RECOMMENDATION

The minimum standards governing variances have been demonstrated to exist; therefore, the Building and Planning Department recommends that the Commission approve.


BOBBI KAUFMAN
Administrator, Building & Planning Department


Date



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**IN THE MATTER OF ZV2011-2 STAFF REPORT
 OF THE BUILDING & PLANNING ADMINISTRATOR FOR SOUTH FORK ESTATES**

TYPE OF REQUEST & BACKGROUND ATTACHMENT

Mr. Edward and Mrs. Carole Galloway [524 Galloway Dr. Lenore, ID 83541-5107] are requesting variance (ZV2011-2) to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

- Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
- Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
- Set aside the requirement to dedicate the access road to public use as required by § B.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

ORDINANCE STANDARDS

The following Clearwater County Subdivision Ordinance standards were considered by the Commission in deciding this request:

1. CCSO Article III.A requires that an application be submitted.
2. CCSO Article III.B requires that a fee be paid.
3. CCSO Article IV § D.2 requires an access road have a sixty (60) foot right-of-way.
4. CCSO Article IV § D.4.d requires that the minimum surfaced or finished width for a street or access road be twenty-four (24) feet.
5. CCSO Article IV § B requires that all streets be dedicated to public use.
6. CCSO Article VIII § B.1 requires that there are such special circumstances or conditions affecting the property that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable and cause and undue hardship.
7. CCSO Article VIII § B.2 requires that strict compliance with the requirements of the Ordinance would result in extraordinary topography, or such other conditions would result in inhibiting the achievement of the objectives of the Ordinance.

8. CCSO Article VIII § B.3 requires that the granting of the specified variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated.
9. CCSO Article VIII § B.4 requires that such variance will not violate the provisions of the Idaho Code.
10. CCSO Article VIII § B.5 requires that such variance will not have the effect of nullifying the interest and purpose of this Ordinance and the Comprehensive Plan.

STAFF FINDINGS

A staff report was completed March 14, 2011. Ordinance standards providing the basis of this request are as follow:

1. A completed application, Grant of Easement, and written response was submitted January 11, 2011. The proper fee was paid.
2. Agenda was published March 03, 2011, in the Clearwater Tribune.
3. Exhibit A-Site plan shows access road Summer Range Drive providing access from county road Middle Road to Southfork Estates as an eighteen (18) foot wide surfaced road with a thirty (30) foot right-of-way width except where the actual property line between Ingle and Galloway meet, then it is only fifteen (15) feet at this intersection into the subdivision.
4. Email/written response received from Ed Galloway [freemancreek@cpcinternet.com] on January 20, 2011, for his variance request:
 - a. The relatively flat farm land terrain of the entire distance of this access (R/W) for approx. 2000' lends it's self to easily accommodating an 18' year around road way as will be built on the existing 30' deeded R/W. I need a variance from the currently required 60' to the existing 30' because this is a historical easement and also provides adequate space to install an 18' all weather road as was approved inside the said subdivision in the original approved prelim plat. Also, I would like to point out there is an additional 15' R/W to the east and adjoining the 30' R/W reserved for utilities where I plan an overhead power line.
 - b. In this situation (a low density rural subdivision) the county ordinance we are applying whose basic tenants were adopted in the mid 70's does not take into account the growth of Rural Clearwater County, it talks about streets, arterials streets, alleys etc. As a land developer we must use variances to make the subs conform to an outdated ordinance. As we are doing in this situation we have to right mistakes made in the original approved plat.
 - c. The access road addressed in this variance was determined not to need a variance during initial public discussions as it is exterior of the main sub. To try and correct these mistakes I am seeking a variance of the R/W from 60' to 30' in width, finished road width from 24' to 18', and a reduction from the 30'x18' variance reductions to 15' at the actual property line(bottleneck) for an infinitesimal distance. These variances do not change actual on the ground

specs on the planned sub. The public welfare is not impacted at all since the changes will not have an impact on emergency vehicles. Nor will it impact other owners in the area as the design and implementation is entirely within parameters of the deeded R/W. and the original (approved) plat. Carole and I are doing this low density sub with applicable CC&Rs to limit impact on the neighbors both visually and physically.

- d. I have been assured by the county attorney and planning administrator that this request does not violate State Codes, it deals with county ordinances which can, by ordinance, be varied to fit unaddressed situations.
 - i. Variance (VAR060204) to vary the interior roads of the subdivision from twenty-four (24) feet to eighteen (18) feet was approved at the November 20, 2006, Planning and Zoning hearing.
 - e. These variances are in sync with precedent ordinances over the last 30-40 years in Clearwater County. Our desire is to set the stage for jobs for excavators, concrete contractors, carpenters, electricians, plumbers, etc. in our county, along with an increased tax base as the Freeman Creek area continues to thrive as it provides recreation and getaways for residents of the surrounding area.
5. On February 2, 2011, Rob Simon, Clearwater County Road and Bridge Department Supervisor, and Bobbi Kaufman, Clearwater County Building and Planning Department Administrator, discussed the proposed access road, past conditions set, and the variance being requested and found the following:
- a. The proposed access road built as an 18' surface on the existing 30' easement would be suffice for this access road; and
 - b. The conditions set in the past would need to be done and approved before the recording of the final plat.
6. Exhibit B-Email sent February 4, 2011, from Rob Simon [ccrb@orofino-id.com] regarding the road connecting the Middle Road to the proposed subdivision:
- a. Thursday, February 3, 2011, I was unable to access Mr. Galloway's road for an up-to-date inspection due to road conditions.
 - b. As previously reported, in general the road is constructed within county specifications, with the following exceptions:
 - i. Cut banks need to be re-sloped to a 2:1 slope to alleviate soil erosion and ditch sloughing.
 - ii. All culverts need to be 18" minimum
 - iii. Realignment of approach to Middle Road to achieve a more 90 degree angle approach.

- c. Due to the general lay of the land, the lack of horizontal curves and minimal vertical curves, it is my opinion that the road as constructed, with an 18' driving surface, would be adequate.
7. Below is an explanation that was sent to Bobbi Kaufman, Clearwater County Building and Planning Administrator on February 28, 2011, by E. Clayne Tyler, Clearwater County Prosecuting Attorney, illustrating the existing easement and why the variance for the dedication of the access road is needed:
 - a. If the owner of the property over which a road runs wants to dedicate the road to the public, the owner would have the power to do so (the Shinn's for example). The problem here is that Galloway does not own the land over which the road runs. Galloway only has an easement. Galloway can not dedicate the easement to the public as it would be an impermissible expansion of the scope of the easement.
 - i. To illustrate: A road crosses Shinn's land to access Property A. Galloway owns property A, and wants to give a neighboring landowner of property B the legal right to use the road crossing Shinn's property, Galloway could not legally do so. That would be impermissibly expanding the scope of the easement beyond that originally intended when the easement was granted (the easement across Shinn's is granted to serve Property A for example. Only the Shinn's can expand it to serve property A and B. Galloway, the owner of property A does not have the legal right to give someone other than future buyers of Property A the right to cross Shinn's land).
 - ii. The argument is that just as Galloway can't give Property B the right to cross Shinn's land, neither can Galloway give the general public the right to cross Shinn's land. That would be an impermissible expansion of the scope of the easement.
 8. The request would be the minimum variance to alleviate the condition because of the standards of the easement.
 9. All circumstances for granting a variance exist.
 10. Property is not within an area of city impact.

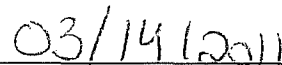
STAFF RECOMMENDATION

The minimum standards governing variances have been demonstrated to exist; therefore, the Building and Planning Department recommends that the Commission approve.



BOBBI KAUFMAN

Administrator, Building & Planning Department



Date



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**IN THE MATTER OF APPEALED ZV2011-2
 STAFF REPORT OF THE BUILDING & PLANNING
 ADMINISTRATOR FOR SOUTH FORK ESTATES**

TYPE OF REQUEST, HISTORY, AND BACKGROUND

A variance (ZV2011-2) request by Mr. Edward and Mrs. Carole Galloway [524 Galloway Dr. Lenore, ID 83541-5107] are requesting variance (ZV2011-2) to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

- Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
- Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
- Set aside the requirement to dedicate the access road to public use as required by § B.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

Galloway's proposed subdivision is to be accessed by an existing road located within a private easement, 30 feet in width, which begins at Middle Road, a Clearwater County public road, and crosses neighboring property owned by the Shinn's, and accesses the Galloway property. The grant of easement contains an anomaly, which causes the 30-foot wide easement to be restricted to 15 feet for an undefined but minuscule length at the boundary separating the Galloway and Shinn properties.

Galloway, on January 11, 2011, filed an application for three variances from the Clearwater County Subdivision Ordinance. Galloway sought to vary the following:

1. To vary the requirement of Clearwater County Subdivision Ordinance Article 4.D.2 which requires access roads to be built within a minimum 60 foot wide right of way:

Galloway sought to vary the right of way for the access road from 60 feet to 30 feet to fall within the 30-foot wide existing ingress and egress easement. Further, Galloway sought to vary the required 60-foot right of way to 15 feet at the Shinn/Galloway property line, where the anomaly exists.

2. To vary the requirements of Clearwater County Subdivision Ordinance Article 4.D.4.d. this requires access roads to have a minimum 24-foot road surface or finished width.

Galloway sought to vary the traveled surface of the access road from 24 feet to 18 feet in width over the majority of the road surface, and to 15 feet at the anomaly site (boundary line).

3. To vary the requirement of Article 4, Section B of the Clearwater County Subdivision Ordinance this requires all arterial, collector, and other streets in a proposed subdivision to be dedicated to the public.

Galloway sought to vary the requirement of dedication to the public so that the access road could remain a private road, and not be dedicated to the public, in that the easement they hold specifically prohibits dedication to the public.

The Commission, following a public hearing held on March 21, 2011, granted Galloway each of the requested variances, and entered written findings of fact and conclusions of law dated April 4, 2011. In that order, the Commission did properly identify the controlling ordinance as set forth below.

On March 25, 2011, Shinn filed a notice of appeal. Shinn is an interested party, owning real property which borders upon the proposed Galloway subdivision. By letter dated March 25, 2011, counsel for Shinn stated as grounds for the appeal:

"No facts or testimony were presented which would authorize the issuances of a variance under the terms and conditions of the Clearwater County Subdivision Ordinance. Further, that the easement which the Galloway's propose to use for access to the property does not allow that road to be utilized for easement for ingress and egress for parties other than Mr. and Mrs. Galloway. Finally, that it is not appropriate for a variance to be granted from the requirement that access to the subdivision be dedicated for public use."

ANALYSIS OF THE BOARD

- I. The Commission, in finding that Galloway had met his burden of showing that special circumstances affecting the property would cause the strict application to be impractical, and would also cause undue hardship, was not supported by substantial evidence on the record as a whole.

For the purposes of this appeal to the Board, due to the access road at issue being an easement which crosses the Shinn's property and accesses neighboring property, the Board finds the Shinn's to have a substantial right which may be prejudiced, and thus have standing to appeal.

An exhaustive review of the record of proceedings at the Commission level reveals no testimony having been presented as to the factor of undue hardship. Review of the application for each variance itself reveals no declaration of what undue hardship may result if strict compliance with the ordinance is required (in spite of the question being specifically asked). No testimony was provided, and undue hardship was not referenced in staff reports.

Although this Board cannot substitute its judgment for the judgment of the Commission, it is still incumbent upon the Commission to restrict its decisions to those facts on the record. This Board cannot uphold the Commission's decision without substantial and competent evidence

on the issue of undue hardship, i.e., relevant evidence which a reasonable mind might accept to support a conclusion, for each of the variances requested by Galloway. The Board has no choice but to reverse the decision of the Commission with regard to the issue of "undue hardship". As the issues of "undue hardship" are intimately tied to the requirement that the "undue hardship" be as a result of special circumstances affecting the property (and not applicable in general to all property in the geographic region or neighborhood), and with an analysis of whether or not strict compliance with the terms of the Ordinance would inhibit the achievement of the objectives of the Ordinance or the Comprehensive Plan, then these issues are remanded for reconsideration as well.

The Board hereby orders each of the three grants of variances remanded to the Commission to receive additional evidence and conduct additional fact finding, by virtue of an additional public hearing, to determine whether or not the element of undue hardship exists, and to re-evaluate the consideration of "undue hardship" in light of the remaining items to be found before a variance can be granted.

As guidance, the Board requests the Commission consider the following:

1. Are there are special circumstances or conditions affecting the property such that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable, and
 2. Are those special circumstances such that failure to grant a variance would cause an undue hardship to the developer, and
 3. Would strict compliance with the requirements of the Ordinance result in inhibiting the achievement of the objectives of the Ordinance, or nullify the purpose of the Ordinance or the Comprehensive Plan?
- II. Also raised on appeal is the issue as to whether the easement which the Galloway's propose to use for access to the property allows the access road to be utilized for ingress and egress for parties other than Galloway.

The Board, upon review of the record, tentatively finds that the bare language of the easement itself does not prohibit subdivision of the property. The Board does not intend to look behind the bare language, nor to attempt to determine the historical intent of the original parties to the grant and receipt of the easement, but limits its review to the bare language of the document, which appears clear and unambiguous.

Sufficient evidence was entered at the Commission level to support the finding that the easement is legally adequate to allow subdivision. It is felt that the proper forum for challenging the intent and scope of an easement of this nature is through the Courts rather than the Board.

This tentative decision is not certified as final, and will not be so certified until the matter is returned from the Commission following the above ordered hearing on remand, and is thus not ripe for appeal at this juncture. A final order will be issued following the conclusion of the additional hearings ordered above.

CONCLUSIONS OF THE BOARD

Based upon the factual record compiled and upon testimony received at the public hearing conducted for such purposes, the Board determines that the Commission's decision on the variance must be repealed and remanded back to the Commission to be re-heard at a public hearing with specific instructions to review and identify whether or not there is undue hardship as required by the county ordinance.

DECISION OF THE BOARD

Therefore, it is the ultimate conclusion of the Board to overturn the Commission decision and to remand the issue of undue hardship back to the Commission with specific instructions to focus and clearly define whether it is an undue hardship in order to grant a variance.

In addition, the Board reserves the judgment of every other matter contained in this appeal excepting the undue hardship question that is remanded back to the Commission.

ORDINANCE STANDARDS

The following Clearwater County Ordinance standards were considered by the Commission in deciding this request:

1. CCSO Article III § A & B requires that an application be submitted and that a fee be paid.
2. CCZO Article XV outlines all legal provisions regarding public notice and requirements regarding public hearings.
3. CCSO Article IV § D.2 requires an access road have a sixty (60) foot right-of-way.
4. CCSO Article IV § D.4.d requires that the minimum surfaced or finished width for a street or access road be twenty-four (24) feet.
5. CCSO Article IV § B requires that all streets be dedicated to public use.
6. CCSO Article VIII sets for the criteria for granting a variance.
 - a. CCSO Article VIII § A. Purpose: The Commission may grant, as a result of unique circumstances such as topographical-physical limitations or a planned unit development, a variance, as herein defined, from the provisions of this Ordinance on a finding that undue hardship results from the strict compliance with specific provisions of requirements of this Ordinance or that the application of such requirements or provision is impracticable.
 - b. CCSO Article VIII § B. Findings: No variance, as herein defined, shall be favorably acted upon by the Commission unless there is a finding, as a result of a public hearing, that all of the following exist:
 - i. That there are such special circumstances or conditions affecting the property that the strict application of the provisions of this Ordinance

would clearly be impracticable or unreasonable and cause and undue hardship.

- ii. That strict compliance with the requirements of the Ordinance would result in extraordinary topography, or such other conditions would result in inhibiting the achievement of the objectives of the Ordinance.
- iii. That the granting of the specified variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated.
- iv. That such variance will not violate the provisions of the Idaho Code.
- v. That such variance will not have the effect of nullifying the interest and purpose of this Ordinance and the Comprehensive Plan.

STAFF FINDING OF FACTS

A staff finding of facts was completed August 11, 2011. Ordinance standards providing the basis of this request are as follow:

- 1. Agenda was published July 28, 2011, in the Clearwater Tribune. Notices were sent to all adjacent property owners and public subdivisions prior to the hearing.
- 2. Exhibit A-Site plan shows access road Summer Range Drive providing access from county road Middle Road to South Fork Estates as an eighteen (18) foot wide surfaced road with a thirty (30) foot right-of-way width except where the actual property line between Ingle and Galloway meet, then it is only fifteen (15) feet at this intersection into the subdivision.
- 3. During a meeting that the developer, prosecuting attorney, and myself had, the following facts were discussed which demonstrates undue hardship.
 - a. The nature of the Galloway property as compared to other developed property is the special circumstance that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable.
 - i. It is not accessed by a public road, but by an easement across neighboring property;
 - ii. Easement is only thirty (30) feet in width;
 - iii. Easement is a private easement (non public) and cannot be expanded or made public without the consent of the other landowners;
 - iv. The development is into ten (10) acre aliquot parts, meaning it is extremely low density, very rural;
 - v. There is very little chance of neighboring development; and
 - vi. There is no need for a network of public roads to support high density development as this is not in an impact area.

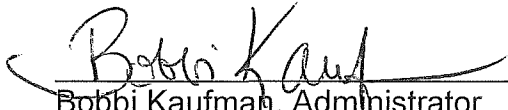
4. Rob Simon, Clearwater County Road and Bridge Department Supervisor has declared that:
 - a. Middle Road is cataloged as a dirt non-maintained (not graded and drained secured) county road but not a county right-of-way; however, it is only maintained to Brock's property which is approximately one mile past the Brown Road intersection. The portion of the road that is maintained is classified as an all-weather road.
 - b. There is enough room for the approach radius to Summer Range Drive with the 30 foot easement and Middle Road's 50 foot petitioned right-of-way.
 - c. Recorded petitions relating to the fact that what is now called Middle Road are the Crow petition recorded in 1910 that extends Middle Road from the intersections of Brown Road north easterly through Sections 09, 10, 15, 16 of Township 37 North Range 01 East and the JA Holliday petition recorded in 1911; however, it was never built.
 - d. In general access road Summer Range Drive is constructed within county specifications, with the following exceptions:
 - i. Cut banks need to be re-sloped to a 2:1 slope to alleviate soil erosion and ditch sloughing.
 - ii. All culverts need to be 18" minimum
 - iii. Realignment of approach to Middle Road to achieve a more 90 degree angle approach.
 - e. Due to the general lay of the land, the lack of horizontal curves and minimal vertical curves, it is my opinion that the road as constructed, with an 18' driving surface, would be adequate and not unsafe with the 30' easement.
5. It was stated at the March 21, 2011, hearing that under the fire code, it provides for security gates for roads whose width is narrower than the road requirements.
6. Exhibit A-1: Letter dated August 10, 2011, by Ed Galloway to the Clearwater County Planning and Zoning Commission. To address the issue of whether an undue hardship exists in the matter of my request for several variances (3), I believe, I submit the following:
 - a. Attempting to satisfy conditions set out in a mid-1970's ordinance is an undue hardship especially since said ordinance was originally put forward to address urban high density checkerboard subdivisions, which could and generally were expanded at a future date using the same existing streets and R/W's (right-of-ways). In the 35 years since this ordinance was enacted the emphases in Clearwater County has shifted from high density urban to low density rural subdivisions, therein lies the need to rely on variances to address the vast differences 35 years has made. Clearwater County has no ordinance addressing low density rural subdivisions hence the hardship in trying to make a 2011 subdivision fit the requirements of a 1970's ordinance, let's look at this from this perspective.

- b. I requested a variance to reduce the width of the R/W from 60' to my existing 30', not only is it a hardship for me to expand the width of my R/W, it would be impossible. The way to overcome this undue hardship is to access the needs of my low density rural subdivision as opposed to the needs addressed in the 1970's ordinance (high density urban). The urban one puts as many as 6 residences per acre, mine puts one residence per 10 acres (approx.) thereby reducing car trips per day from hundreds to ten, maybe 20 using said road per day. So the reason for my variance request to reduce the road width from 24' to the adequate 18' is this low density usage. The question now before us is can I get this new road width on a 30' easement?
 - i. The Clearwater County Road Supervisor, Rob Simon, says in a letter to the Commission that 30' is adequate in this topography to get the desired 18' road base. He says 18' is adequate for this type of subdivision, it won't impede emergency vehicles. The same pertains to the requested 15' bottle neck at the property line; line of site is adequate for ingress and egress of emergency vehicles as well as general traffic.
 - c. Road costs present another undue extreme hardship; while the consensus is that an 18' road on a 30' easement is adequate for this low density subdivision the cost differential is substantial between the widths. The 24' width can cost as much as \$35/ft., an 18' road will come in at around \$12-15/ft. Never were State or County land use ordinances intended to place undue burdens on private property owners, they were in place minimum standards for development. These minimum standards are not interchangeable between different types of subdivisions without using the variance process or heaping undue hardships on property owners.
 - d. Let's summarize, 18' road is deemed adequate, 30' easement is adequate for the 18' road, a 15' gate serves us well and hinders nothing or no one. Any requirements above these are an undue hardship to the landowner. What about the 5 years this has been tied up in a "quasi-judicial" process, is this not an undue hardship? Holding me up when other identical divisions on Freeman Creek have passed and are fully operational, is this a hardship. I urge the members of the P & Z Commission to pass these variances as they have done twice before as the facts remain the same. Send this back to the BOCC where elected officials can make the final decision as should be.
- 7. The request would be the minimum variance to alleviate the condition because of the standards of the easement.
- 8. All circumstances for granting the variances exist and undue hardship has been shown.
 - a. Due to the nature of the existing easement that has been granted; the strict enforcement of a sixty foot wide easement with a twenty-four surfaced road dedicated as a public right-of-way as established in the Clearwater County Subdivision Ordinance would be unreasonable and would create an undue hardship on the applicant not justified by the construction of a low density rural access road.

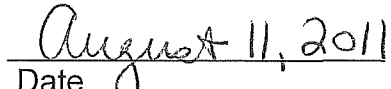
9. Property is not within an area of city impact.

RECOMMENDATION

Based upon all of the information and testimony given at the public hearing and in accordance with the Clearwater County Planning and Zoning Commission, as a hearing board, hereby approves the request for a variance request ZV2011-2.



Bobbi Kaufman, Administrator
Building and Planning Department



Date



CLEARWATER COUNTY BUILDING & PLANNING
 150 Michigan Ave. • PO Box 586 • Orofino, ID 83544
 (208) 476-4815 • Fax (208) 476-8994 • bp@clearwatercounty.org

**IN THE MATTER OF SUB060096 & ZV2011-2 STAFF REPORTS
 OF THE BUILDING & PLANNING ADMINISTRATOR FOR SOUTH FORK ESTATES**

TIMELINE OF EVENTS & BACKGROUND

May 23, 2006

Mr. Edward and Mrs. Carole Galloway submit application SUB060096 for a Class B Subdivision named East Fork to Tim "T.J." Rausch, previous Clearwater County Building and Planning Administrator

June 26, 2006

P & Z Hearing for advisement by way of a Sketch Plan

June 28, 2006

Official notice of postponement letter was sent by Tim "T.J." Rausch, Zoning Administrator, stating when applicant is ready to proceed with the Preliminary Plat and has submitted all required information, his application would then be on the agenda.

October 27, 2006

Variance application VAR060204 for road width interior of subdivision from 24 feet to 18 feet was submitted by applicants.

November 20, 2006

P & Z Hearing for VAR060204 & preliminary plat stage of SUB060096.

Exhibit N-VAR060204 was approved by the Planning and Zoning Commission; SUB060096 preliminary plat was approved by the Planning and Zoning Commission with the following recommendations at the time of final plat:

1. That the applicant present copies of the plat on drafting film as required by CCSO III.J.1.a;
2. The intersection of the existing road and the county road be reconstructed to a ninety degree angle;
3. Existing culvert(s) be replaced by eighteen inch diameter culverts; and
4. Existing cut banks are re-cut to a 2:1 slope.

December 4, 2006

Tim "T.J." Rausch presented SUB060096 to the Board of County Commissioners of Clearwater County for public hearing. The Board approved the preliminary plat as presented with the variance approval and along with the above 1-4 recommendations made by the Planning Commission to be completed at the time of final plat.; however, according to the Clearwater County Subdivision Ordinance Article III Section I § 9.d:

Action on the Preliminary Plat. The Commission may approve, disapprove or table the preliminary plat for additional information. Such action shall occur within forty

(40) days of the date of the regular meeting at which the plat was first considered at a public hearing by the Commission. The action, and the reasons for such action, shall be stated in writing by the Administrator, and forwarded to the applicant. **The Administrator shall also forward a statement of the action taken and the reasons for such action, together with a copy of the preliminary plat to the Board for their record.** Upon approving or disapproving a preliminary plat the Commission shall specify: (08-17-1981)

1. The Ordinance and standards used in evaluation of the application and
2. The reasons for approval or disapproval.

The Board of County Commissioners of Clearwater County was only to receive the statement of action, reasons, and a copy of the preliminary plat for their record. No Findings of Fact and Written Decision exist for this hearing as the Board was not to make any decisions about the preliminary plat. Findings of Fact were completed and signed by the Planning and Zoning Commission Chairman for their November 20, 2006, hearing.

November 19, 2007

Email sent by Ed Galloway to the Building and Planning Department at bp@clearwatercounty.org requesting an extension of one year (as per CCSO Article III Section I § 10) to complete the Final Plat.

November 20, 2007

Letter sent by Lisa Knowles, previous assistant for the Clearwater County Building and Planning Department, stating that Mr. Galloway's request for a one year extension was heard at the November 19, 2007, P & Z Hearing. He was granted an extension not to exceed December 4, 2008.

October 9, 2008

Ed Galloway came in and asked to be on the November 17, 2008, agenda.

November 17, 2008

P & Z Hearing final plat stage for SUB060096 was postponed by the Planning and Zoning Commission. No findings were required because no recommendations were made. Below are the approved minutes for this application:

7:09

(SUB06096) A Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots ranging between 6+ acres up to 12+ acres, named Hidden Valley Subdivision. This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of Middle Road; Zoned F-1. This is a Final Plat Proposal.

Chairman Bruce opened the public hearing and asked the applicant to present themselves. MR. EDWARD GALLOWAY (4301 FREEMAN CREEK, OROFINO) was present.

Ms. Administrator: "I move that the Commission recommend approval for SUB06096, a request for the Final Plat Stage of a Class B Subdivision request by Edward & Carole Galloway, named Hidden Valley Subdivision." Mr. Brown second.

Additions to findings:

Angela Vander Pas, Clearwater County E911 Coordinator, has a concern about the name of the subdivision due to there already being a road by that name. She believes this could cause confusion with emergency response, since the road and subdivision are located in two different areas and recommends that the name of the subdivision be changed.

Ms. Administrator states that on the application the name proposed was East Fork, which was not listed on the preliminary record of survey.

Staff findings are presented on the easel.

Testimony by applicant:

Mr. Ed Galloway (4301 Freeman Creek Road, Lenore) explained that if he had been made aware of the duplicate name he would have remedied that before this hearing. Mr. Galloway requests that he have the chance to rebut any of the opposed statements individually, which he is denied. He also explained that he is willing to maintain and widen the road, also take out some corners. The road also accesses his property. Mr. Galloway claimed to have an agreement with the Board of County Commissioners that he would maintain the county road. He also stated that the County gave him a non-paying contract to widen the road.

Ms. Cannizzo asked Mr. Galloway to explain where he is going to improve the road.

Ms. Administrator gave a brief summary on the history of this application, and that there was a Variance (VAR060204) on the road width within the subdivision approved November 20, 2006.

Supporting testimony:

MR. TERRY GOLDING (P.O. BOX 1818, LEWISTON, ID 83501) stated that he is Mr. Galloway's surveyor and explained that the subdivision does meet county standards and there is a 60 foot easement throughout the entire subdivision.

Mr. Ed Galloway stated that the BOCC told him that this application falls under the rules that were in effect at the time that this application first came to the Planning & Zoning Commission.

Ms. Administrator quotes Clearwater County Subdivision Ordinance Article IV, Section B, Design Standards.

Mr. Golding stated that each county has a problem with road ordinances. Planning & Zoning should be able to decipher the difference between public access and private access.

Mr. Galloway stated that the BOCC said that the rules could not be changed in the middle of the game and that they would not address external access.

Opposing testimony:

MR. GARY JONES (1304 IDAHO STREET, LEWISTON, ID 83501) stated he is the representing attorney from Jones, Brower & Callery, P.L.L.C, for Ed & Donilee Shinn. He also stated that the Clearwater County Subdivision Ordinance Article IV, Section B, Design Standard is very clear on the requirements on roads. He also stated that Mr. Galloway has at most a 15 foot easement on each side of the road through Mr. Shinn's property and a 15 foot easement on one side of the section line on his own property and does not have a 15 foot easement from Mr. Ingle. There is a requirement of a 60 foot easement. Mr. Jones entered Exhibit K, including a letter explaining the easement situation

and a diagram showing where the easement starts, stops, and footage on each side of the road in Sections 8, 9, 17, & 16.

The Commission discusses the property that people would have to cross to enter the subdivision.

Opposing Testimony:

MR. DON INGLE (4271 FREEMAN CREEK ROAD, LENORE, ID 83541) questioned the Planning & Zoning Commission as to whether or not they have even read the Ordinances. He went on to state that the Commission is not even taking into consideration the fact that he has a farm and all these subdivisions that are happening are happening all around his property. Mr. Ingle also stated that he would not be selling any property so there will be no option for a 60 foot easement to Mr. Galloway.

Opposing Testimony:

MR. ED SHINN (671 SAMPSON ROAD, TOPPENISH, WA) stated that Mr. Galloway has not stuck to his promises on road work in the past and all he remembered the BOCC saying was that Mr. Galloway needed to put turn outs in the subdivision.

Opposing Testimony:

MRS. DONILEE SHINN (671 SAMPSON ROAD, TOPPENISH, WA) explained the legal easement again.

Written correspondence includes a letter of opposition from Sonny Kinsey (4281 Freeman Creek Road, Lenore) read aloud by Ms. Administrator during the last hearing.

Neutral Testimony:

Mr. Terry Golding stated that there is a 30 foot easement for ingress and egress, but on the south side of the road there is also a 30 foot utility easement, but both easements are non-exclusive, therefore are not restricted on use.

Neutral Testimony:

Mr. Gary Jones stated that the utility easement was not mentioned because it is not a relevant point nor is it available for ingress and egress, it is for utility only.

Rebuttal by applicant:

Mr. Ed Galloway stated that there was an agreement to straighten the road and put culverts in, which was done. He also mentioned that he put Covenants Conditions and Restrictions on the lots so that a decent, respectable development comes in. Mr. Shinn stated in a letter that most of this development is in a draw; Mr. Galloway stated that this property is 80% to 90% flat. He also says that Freeman Creek is a very appropriate area to divide. Mr. Galloway said that his easement is supposed to be 30 feet; he will have an attorney take care of the written part.

Mr. Nation asked Mr. Galloway how he would fix the easement situation. Mr. Galloway explained that the prescriptive easement is supposed to be 30 feet, but the legal description was written up incorrectly.

Vice Chairman Reggear discussed prior ownership of the surrounding lots with Mr. Galloway.

Debate and Discussion:

Andy Helkey, North Central District Health Department Environmental Health Specialist (105 115th Street, Orofino, ID 83544) stated that he has done test holes on every lot.

Rob Simon, Clearwater County Road and Bridge Supervisor (P.O. Box 812, Orofino, ID 83544) stated that he is also a resident of Middle Road. Mr. Beard asked him about LHTAC standards. They discussed road access requirements and what it should be; which there is already a variance on the road width changing the requirement from 24 foot to 18 foot wide. The variance that was granted only applies to the internal roads in the subdivision, not the road that access the subdivision.

The Commission discussed Design Standards out of the Clearwater County Subdivision Ordinance, Idaho Code, and external roads, internal roads, and the requirements for both.

The Commission and Ms. Administrator debated over the standards for private and public roads, and what type of road is required to access a platted subdivision. They also debate over whether or not they should get legal clarification before moving forward with this subdivision. The Commission also discussed, at great length, whether or not they could legally go back over everything that was already approved in the preliminary.

Mr. Beard makes a motion to postpone. Ms. Cannizzo second.

Mr. Beard questioned whether or not Mr. Galloway can get proof that this easement is taken care of before the next scheduled hearing. Mr. Galloway needs to have the legal description re-written to show the easement he claims to have, according to him the intent is there but the legal description does not convey it.

Mr. Galloway stated again that the Board of County of Commissioners told him that the rules could not be changed in the middle of the game.

8:54

POINT OF ORDER by Mr. Gary Jones, Jones, Brower & Callery, P.L.L.C

"I think it's appropriate that you are following this under Robert's Rules of Order, I think the evidentiary part of this meeting has been concluded and that this is now a decision for your commission to make with out the input from Mr. Galloway."

Mr. Galloway withdrew his comments.

The Commission discussed questions that need legal clarification at great length. The difference between public access road and private drive needs to be deciphered and exactly when each one would apply. It also has to be decided if the Commission has the legal ability to go over the preliminary plat that has already been approved, given that the Commission has the legal ability to do so, would Mr. Galloway need to apply for a Variance on the road that accesses the Subdivision. The legal standards for access roads also need to be clarified. Ms. Administrator asked Rob Simon, Clearwater County Road & Bridge Supervisor if Mr. Galloway will need to get an access permit, he said definitely.

Ms. Administrator questioned whether or not this application should still be in the preliminary stage due to all the conditions that were set by the Commission when they recommended approval and by the BOCC when they approved, not being completed.

There being no further discussion among the Commission, Chairman Bruce put the motion to postpone to a vote. The postponement carried unanimously.

FTR record time 9:03:4-Postponed until next regular scheduled meeting January 20, 2009.

November 18, 2008

Official notice of postponement letter was sent by Bobbi Kaufman, Administrator of the Clearwater County Building and Planning Department stating that this application will be on the agenda for the January 20, 2009, Planning and Zoning Hearing, and needs to comply with the following requirements as requested by the Planning Commission:

1. Provide proof of legal easement of the additional 15 feet where your property line in section 9 and section 8 meet
2. Rename the subdivision

Note: Application was not on the Agenda for January 20, 2009, as the applicant was not prepared with the above mentioned items complete.

March 16, 2009

Exhibit L-Memo from Clayne Tyler sent to the Commissioners, Bobbi Kaufman, and TJ Bruce regarding P & Z Issues-what the difference between a public and private road is, ect.

May 18, 2009

Ed Galloway called and asked about his subdivision and the letter from Clayne. I told him he would need to do a records request through the Board of County Commissioners Office for a copy of this letter.

June 29, 2009

Ed and Nick Galloway came in to record Freeman Creek Bench and discussed this subdivision off of Middle Road.

July 4, 2010

Exhibit M-Letter sent to Ed and Carole Galloway by E. Clayne Tyler, Clearwater County Prosecuting Attorney, regarding Class B Subdivision SUB060096 and what needs to be done to bring this matter to a conclusion. After reviewing the file, it appears that it needs to be re-calendared for a vote in front of the Clearwater County Planning and Zoning Commission.

November 12, 2010

Bobbi Kaufman, Clearwater County Building and Planning Administrator, and E. Clayne Tyler, Clearwater County Prosecuting Attorney, met regarding SUB060096 and discussed what needs to be done regarding the access road and variances needed.

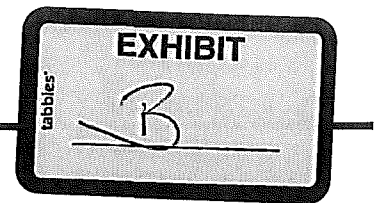
December 21, 2010

Letter sent to Ed and Carole Galloway by Bobbi Kaufman, Clearwater County Building and Planning Administrator, of what was discussed on November 12, 2010, and what the next steps for the variance are.

January 11, 2011

Ed and Carole Galloway submit application ZV2011-2 to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance.

Bobbi Kaufman



From: Robert Simon [ccrb@orofino-id.com]
Sent: Friday, February 04, 2011 3:11 PM
To: Bobbi Kaufman
Subject: Galloway/Middle Road

February 4, 2011

Bobbi Kaufman
Clearwater County Planning and Zoning Administrator

RE: Road connecting the Middle Road and the proposed Galloway Sub-Division

Bobbi,

Thursday 2-3-2011 I was unable to access Mr. Galloway's road for an up-to-date inspection due to road conditions.

As previously reported, in general the road is constructed within county specifications, with the following exceptions:

1. Cut banks need to be re-sloped to a 2:1 slope to alleviate soil erosion and ditch sloughing.
2. All culverts need to be 18" minimum
3. Realignment of approach to Middle Road to achieve a more 90° approach.

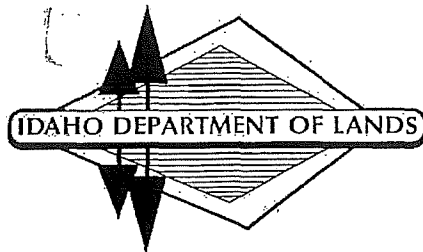
Due to the general lay of the land, the lack of horizontal curves and minimal vertical curves, it is my opinion that the road as constructed, with an 18' driving surface, would be adequate.

Please contact me with any questions or concerns.

Rob

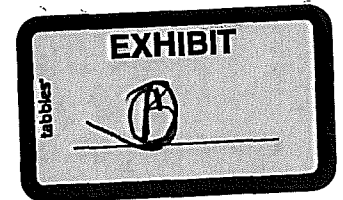
Robert Simon
Supervisor, Clearwater County Road & Bridge
PO Box 812
Orofino, ID 83544
Work 208 476 4813
Cell 208 827 0332
Fax 208 476 9553

PONDEROSA
SUPERVISORY AREA
3130 Highway 3
Deary ID 83823
Phone (208) 877-1121
Fax (208) 877-1122



GEORGE B. BACON, DIRECTOR
EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF LAND COMMISSIONERS
C.L. "Butch" Otter, Governor
Ben Ysursa, Secretary of State
Lawrence G. Wasden, Attorney General
Donna Jones, State Controller
Tom Luna, Sup't of Public Instruction



February 11, 2011

Bobbi Kaufman
Building and Planning Administrator
Clearwater County
P. O. Box 586
Orofino, Idaho 83544

RE: Edward & Carolë Galloway - ZV2011-2
Variance
Section 9 T37N R1E - Freeman Creek Area off of county road Middle Road, Lenore

Dear Ms. Kaufman:

Thank you for the opportunity to review and comment on the Edward and Carolë Galloway's application for a variance request to vary access road specifications under Article IV of the Clearwater County Subdivision Ordinance - ZV2011-2.

As you may know, Idaho Department of Lands' (IDL) mission is to manage State Endowment Trust Lands (State Trust Lands) in a manner that will maximize long-term financial returns to the Beneficiary Institutions. The IDL mission is a constitutional mandate and is overseen by the State Board of Land Commissioners. State Trust Lands are not managed for the public at large and should not be referred to as "public lands" or "open space", either specifically or in a generic sense. These are working lands producing revenue for the Beneficiary Institutions.

Idaho Department of Lands has reviewed the application materials received February 8th, 2011 provided by Clearwater County for the Galloway Variance Request. Based on the documentation provided to IDL, the development will not impact State Trust Lands at this time. Should the proposed development be modified during the review or approval process, IDL requests that updated application information be submitted to the Ponderosa Area Office for additional review.

Thank you again for the opportunity to review and comment on this application. Please contact me at (208) 877-1121 if you have questions or need more information.

Sincerely,

Sam Charles
Ponderosa Area Manager

cc: Kate Langford, Strategic Business Analyst - Planning
Julianne Shaw, Assistant Planner

Bobbi Kaufman

A-2

From: Julianne Shaw <JShaw@idl.idaho.gov>
Sent: Tuesday, August 09, 2011 3:46 PM
To: Bobbi Kaufman
Subject: ZV2011-2 Galloway
Attachments: Galloway ZV2011-2 AREA_Comment Ltr.pdf

Good afternoon Bobbi

Just a quick note to verify that the Idaho Department of Lands comment letter is included in the Board of county Commissioners packet / file for the August 15th public hearing, regarding a request for a variance by Edward and Carole Galloway to vary access road specifications.

I have attached a copy of the comment letter to this e-mail for your convenience.

Best,

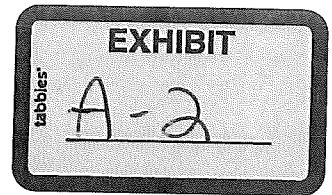
JULIANNE SHAW

Assistant Planner

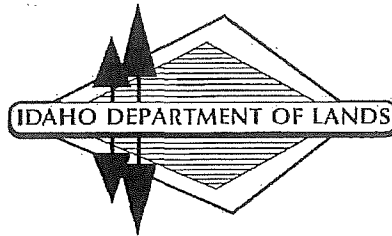
Idaho Department of Lands | 300 N. 6th Street, Ste. 103 - Boise, ID 83720 | ☎ 208.334.0262 | Fax

208.334.2339 | jshaw@idl.idaho.gov

Idaho Department of Lands ~ Managing Endowment Trust Lands
The LAND Where MIRACLES Grow



PONDEROSA
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February 11, 2011

Bobbi Kaufman
Building and Planning Administrator
Clearwater County
P. O. Box 586
Orofino, Idaho 83544

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Variance
Section 9 T37N R1E - Freeman Creek Area off of county road Middle Road, Lenore

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Thank you again for the opportunity to review and comment on this application. Please contact me at (208) 877-1121 if you have questions or need more information.

Sincerely,

Sam Charles
Ponderosa Area Manager

cc: Kate Langford, Strategic Business Analyst - Planning
Julianne Shaw, Assistant Planner

180090

EXHIBIT

GRANT OF EASEMENTS

This Grant of Easements is made and entered into this 21 day of Sept., 1998, by and between H. L. Ogden, a single man, Rural Route 1, Box 63, Lenore, Idaho 83541, Robert J. Brock and Elaine Brock, husband and wife, 2925 Cleveland Hill Road, Roseburg, Oregon 97470, Harold Johnson and Sophia Johnson, husband and wife, in care of, Donald F. Johnson, 2798 Grand View Drive, Clarkston, Washington 99403, Donald F. Johnson and Janet E. Johnson, husband and wife, 2798 Grand View Drive, Clarkston, Washington 99403, Dale Joe Richardson and ^{Brigitte SR.} ~~Bridgette~~ Richardson, husband and wife, P.O. Box 1300, Orofino, Idaho 83544, and Edward J. Galloway and Carole K. Galloway, husband and wife, 4301 Freeman Creek Road, Orofino, Idaho 83544.

WHEREAS, H. L. Ogden is the owner of the following-described real property situate in the situate in the County of Clearwater, State of Idaho, to-wit:

Township 37 North, Range 1 E.B.M., Section 17:
Lots 2, 3, 4, West 6 acres of SE1/4NW1/4, Westerly
86 feet of NE1/4SW1/4, SE1/4SW1/4, SE1/4.

WHEREAS, Robert J. Brock and Elaine Brock are the owners of the following-described real property situate in the County of Clearwater, State of Idaho, to-wit:

Township 37 North, Range 1 E.B.M., Section 17:
SW1/4NE1/4, SE1/4NW1/4 less the West 189 feet,
NE1/4SW1/4 less South 1065 feet of the
West 143 feet, Tax Number 496.

WHEREAS, Harold Johnson and Sophia Johnson are the owners of the following-described real property, situate in the County of Clearwater, State of Idaho, to-wit:

Township 37 North, Range 1 E.B.M., Section 17:
NW1/4NE1/4, NE1/4NE1/4, SE1/4NE1/4.

Filed and recorded at the request of CLEARWATER LAND TITLE
at 4:25 o'clock A. M., this 30 day of December, 1998.
By: Robin Christensen
Ex-Officio Auditor-Recorder
Clearwater County, Idaho
Fee: 2700

Return: CLEARWATER LAND TITLE

WHEREAS, Donald F. Johnson and Janet E. Johnson are the owners of the following-described real property situate in the County of Clearwater, State of Idaho, to-wit:

Township 37 North, Range 1 E.B.M., Section 16:
NW1/4

WHEREAS, Dale Joe Richardson and ~~Bridgette~~ ^{Brigitte B.R.} Richardson, husband and wife, are the owners of the following-described real property situate in the County of Clearwater, State of Idaho, to-wit:

Township 37 North, Range 1 E.B.M., Section 15:
W1/2, N1/2NE1/4
Section 22: N1/2NW1/4
Section 14:
NW1/4NW1/4
Section 10: Lots 5 and 6 South of the Reservation Line.

WHEREAS, Edward J. Galloway and Carole K. Galloway, husband and wife, are the owners of the following-described real property situate in the County of Clearwater, State of Idaho, to-wit:

Township 37 North, Range 1 E.B.M., Section 9:
Lots 3 and 4 North of the Reservation Line.
Lots 7 and 8 South of the Reservation Line.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, H. L. Ogden grants to each of the other parties hereto; Robert J. Brock and Elaine Brock, husband and wife, grant to each of the other parties hereto; Harold Johnson and Sophia Johnson, husband and wife, grant unto Donald F. Johnson and Janet E. Johnson, husband and wife, and Dale Joe Richardson and ~~Bridgette~~ ^{Brigitte B.R.} Richardson, husband and wife; and Donald F. Johnson and Janet E. Johnson grant unto Dale Joe Richardson and ~~Bridgette~~ ^{Brigitte B.R.} Richardson, husband and wife, a perpetual non-exclusive

easement thirty (30) feet in width for ingress and egress to the county road in Section 17, Township 37N, Range 1 E.B.M., over and across the southerly fifteen (15) feet of the NW1/4, the southerly fifteen (15) feet of the SW1/4NE1/4, the southerly fifteen feet of the SW1/4SE1/4NE1/4, the northerly fifteen (15) feet of the SW1/4, the northerly fifteen (15) feet of the NW1/4SE1/4, the northerly fifteen (15) feet of the NW1/4NE1/4SE1/4, fifteen (15) feet on each side of the centerline of an existing road crossing the S1/2SE1/4NE1/4, fifteen (15) feet on each side of the centerline of an existing road crossing the northerly extremity of the N1/2SE1/4NE1/4 and in Section 16, fifteen (15) feet on each side of the centerline of an existing road crossing the NW1/4 of Section 16 to the extent that the description of this easement crosses the real property of the parties hereto together with a perpetual thirty (30) foot easement for utilities, the centerline of which is the northerly boundary line of the above-described easement for ingress and egress.

FURTHERMORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, H. L. Ogden, Robert J. Brock and Elaine Brock, husband and wife, and Harold Johnson and Sophia Johnson, husband and wife, grant to Edward J. Galloway and Carole K. Galloway, husband and wife, a perpetual non-exclusive easement thirty feet (30') in width for ingress and egress to the county road and Section 17, Township 37 N., Range 1 E.B.M., over and across the southerly fifteen feet (15') of the NW 1/4, the southerly fifteen feet (15') of the SW1/4NE1/4, the southerly fifteen feet (15') of the SW1/4SE1/4NE1/4, the northerly fifteen feet (15') of the SW1/4, the northerly fifteen feet (15') of the NW1/4SE1/4,

northerly fifteen feet (15') of the NW1/4NE1/4SE1/4, the fifteen feet (15') on each side of the centerline of an existing road crossing the S1/2SE1/4NE1/4, fifteen feet (15') on each side of the centerline of an existing road crossing the northerly extremity of the N1/2NE1/4SE1/4 to the extent that the description of this easement crosses the real property of the Grantors together with a perpetual easement thirty feet (30') wide for utilities, the centerline of which is the northerly line of the above-described easement for ingress and egress.

FURTHERMORE, In consideration of One Dollar (\$1.00) and other good and valuable consideration, Harold Johnson and Sophia Johnson, husband and wife, grant to Edward J. Galloway and Carole K. Galloway, husband and wife, a perpetual non-exclusive easement fifteen feet (15') in width across the easterly fifteen feet (15') of the E1/2 of the NE1/4 of Section 17 for ingress and egress to the easterly extremity of the easement for ingress and egress granted above.

FURTHERMORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, Donald F. Johnson and Janet E. Johnson, husband wife, grant to Edward J. Galloway and Carole K. Galloway, husband and wife, a perpetual non-exclusive easement fifteen feet (15') in width for ingress and egress across the westerly fifteen feet (15') of the NW1/4 of Section 16 for ingress and egress to the extremity of the first easement for ingress and egress granted above to Edward J. Galloway and Carole K. Galloway, husband and wife, together with a perpetual thirty foot (30') easement for utilities across the westerly thirty feet (30') of the NW1/4 of Section 16.

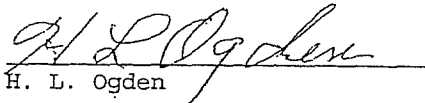
The utility easements include, but are not limited to, a grant to Clearwater Power Company (Cooperative) to construct, reconstruct, rephase, repair, operate, and maintain an electric transmission or distribution line or system; to cut and trim trees and shrubbery to the extent necessary to keep them clear of said electric line or system; and to cut down, from time to time, all dead, weak, leaning, or dangerous trees, that are tall enough to strike the wires in falling.


The undersigned agree that all poles, wires, and other facilities, including any main service entrance equipment, installed on the above-described lands at the Cooperative's expense, shall remain the property of the Cooperative, removable at the Cooperative's option, upon termination of service to or on said land.

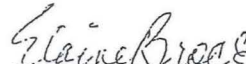
As part of the consideration for the grant of the above-described easements, Donald F. Johnson, Ed Galloway, and Dale Joe Richardson, at their own expense, shall straighten and move the existing road that presently traverses the SW1/4NE1/4, Section 17, so that the same falls within the confines of the easement for ingress and egress granted herein.

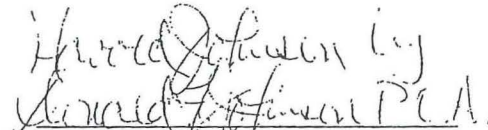
This Grant of Easements is binding upon and inures to the benefit of the heirs, assigns, and successors of the parties hereto, and the easement for ingress and egress shall not be deemed a public right-of-way.

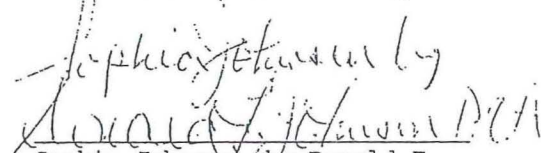
IN WITNESS WHEREOF, the parties have hereunto executed this Grant of Easements on the dates set forth in the following acknowledgments.

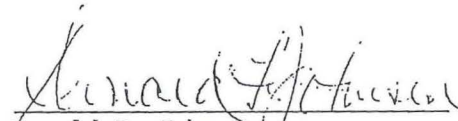

H. L. Ogden


Robert J. Brock

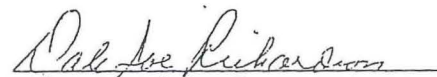

Elaine Brock


Harold Johnson, by Donald F.
Johnson, Power of Attorney

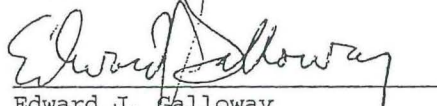

Sophia Johnson, by Donald F.
Johnson, Power of Attorney



Donald F. Johnson


Janet E. Johnson


Dale Joe Richardson


Bridgette Richardson
Bridgette B.R.


Edward J. Galloway


Carole K. Galloway

STATE OF IDAHO)
 :
County of Clearwater)

On this 15th day of October, 1998, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared H. L. Ogden, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

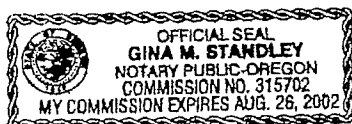
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Deane J. Butz
Notary Public in and for the
State of Idaho, residing
at Orofino, therein.
My commission expires: 5/10/99

STATE OF OREGON)
 :
County of Douglas)

On this 21 day of Sept., 1998, before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared Robert J. Brock and Elaine Brock, husband and wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

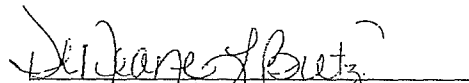
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Gina M. Standley
Notary Public in and for the
State of Oregon, residing
at Aug. 26, 2002, therein.
My commission expires:

STATE OF IDAHO)
 :
County of Clearwater)

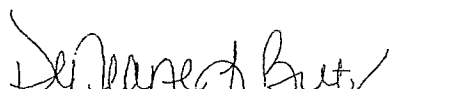
On this 9th day of October, in the year 1998,
before me, a Notary Public in and for the State of Idaho,
personally appeared Donald F. Johnson, known or identified to
me to be the person whose name is subscribed to the within
instrument as the attorney in fact for Harold Johnson and
Sophia Johnson and acknowledged to me that he subscribed the
names of Harold Johnson and Sophia Johnson thereto as
principals, and his own name as attorney in fact.


Notary Public in and for the
State of Idaho, residing at
Orofino, therein.
My commission expires: 5/10/99

STATE OF IDAHO)
 :
County of Clearwater)

On this 9th day of October, 1998, before me, the
undersigned, a Notary Public in and for the State of Idaho,
personally appeared Donald F. Johnson and Janet E. Johnson,
husband and wife, known to me to be the persons whose names
are subscribed to the within instrument and acknowledged to me
that they executed the same.

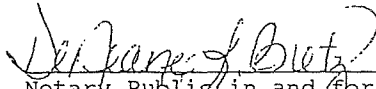
IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal the day and year in this certificate
first above written.


Notary Public in and for the
State of Idaho, residing
at Orofino, therein.
My commission expires: 5/10/99

STATE OF IDAHO)
 :
County of Clearwater)

On this 20 day of October, 1998, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Dale Joe Richardson and Bridgette Richardson, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

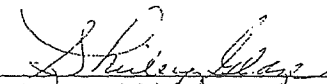
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

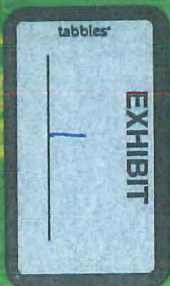

Notary Public in and for the
State of Idaho, residing
at Orofino, therein.
My commission expires: 5/16/99

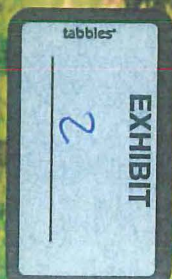
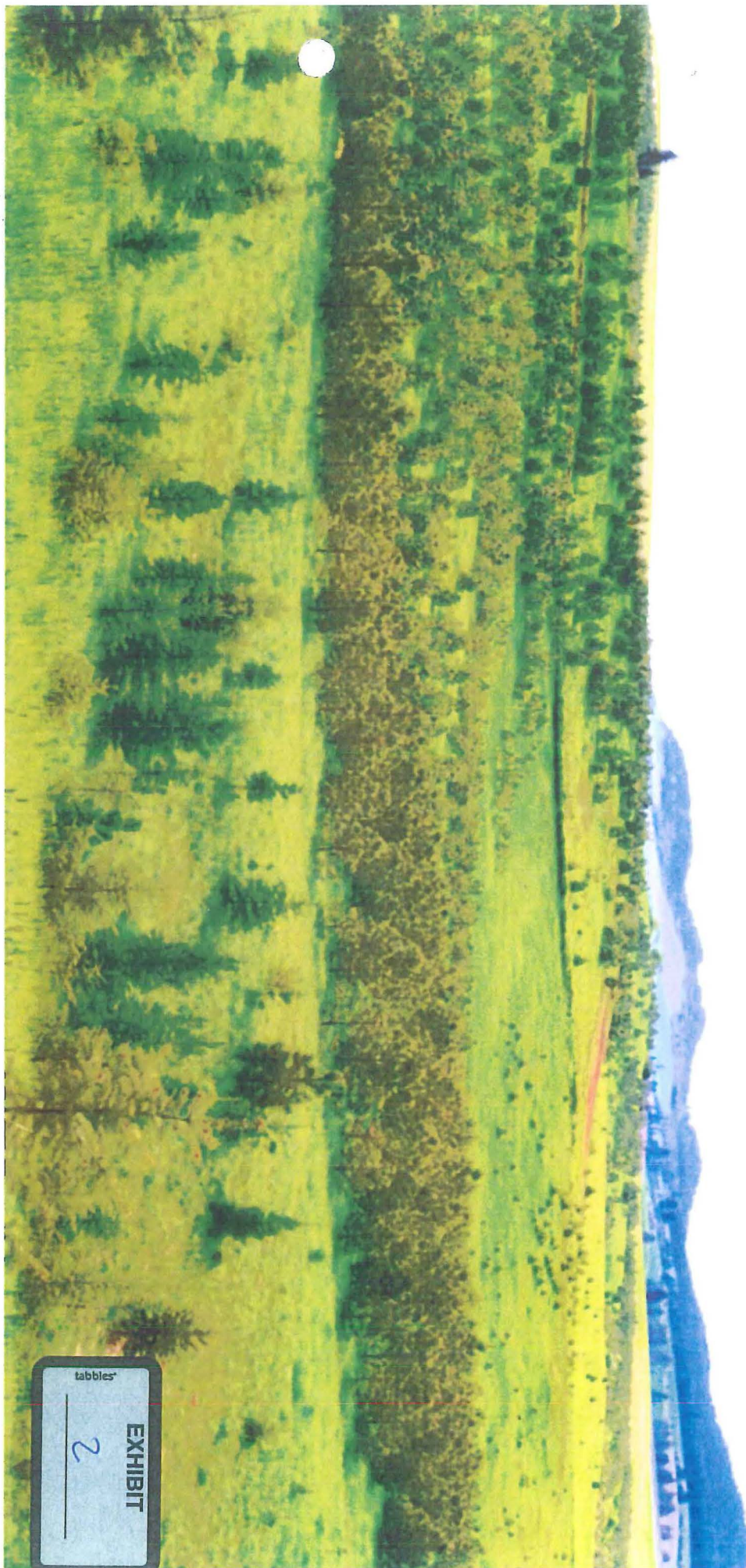
STATE OF IDAHO)
 :
County of Clearwater)

On this 27th day of October, 1998, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Edward J. Galloway and Carole K. Galloway, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

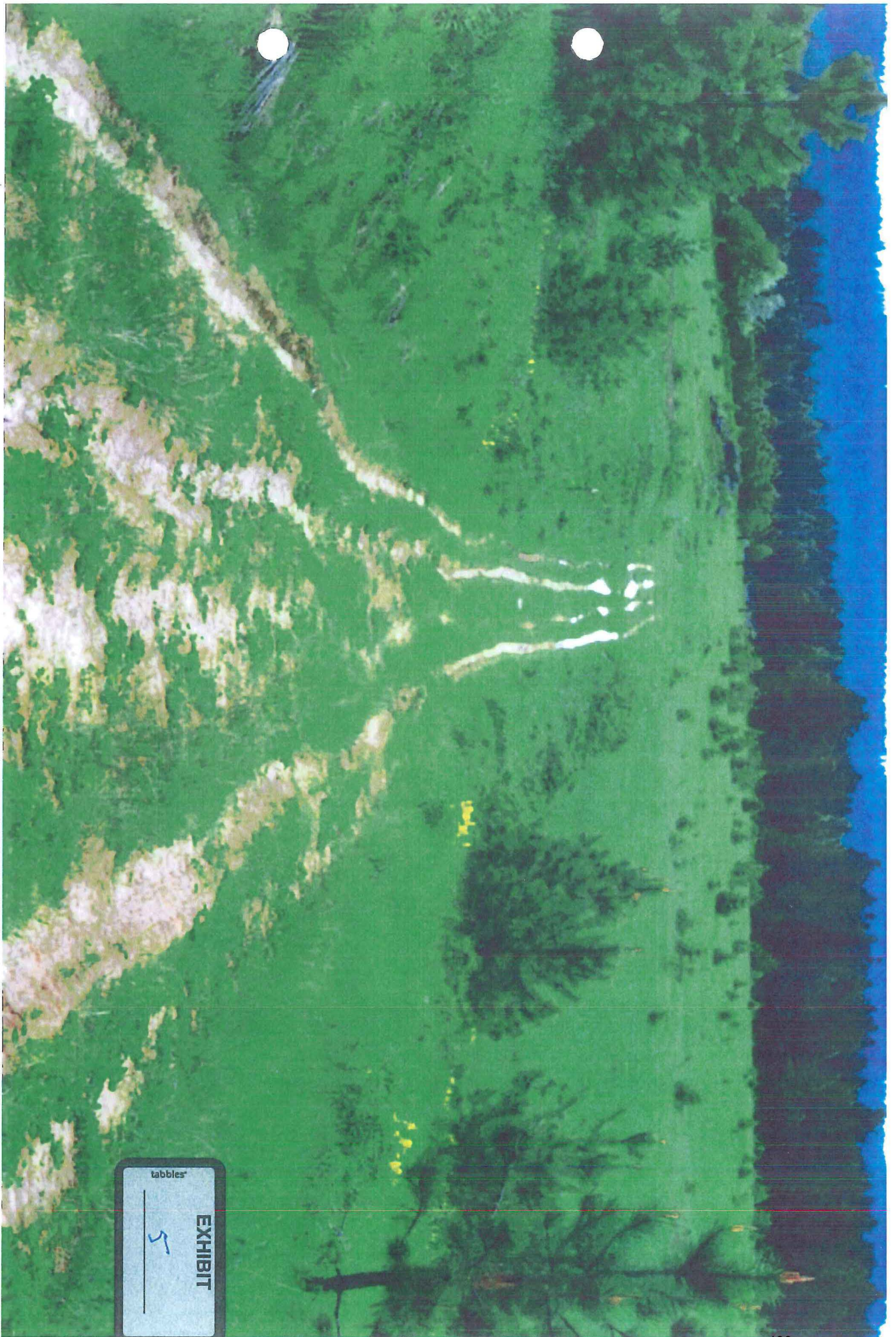

Notary Public in and for the
State of Idaho, residing
at Orofino, therein.
My commission expires: 8-6-03











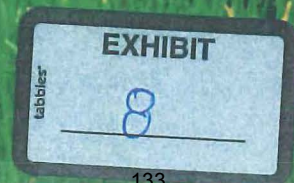
tabbles®
EXHIBIT
5



EXHIBIT
6
131



tabbles®
EXHIBIT
2





EXHIBIT

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9

134



CLEARWATER COUNTY BUILDING & PLANNING
 150 Michigan Ave. • PO Box 586 • Orofino, ID 83544
 (208) 476-4815 • Fax (208) 476-8994 • bp@clearwatercounty.org

**IN THE MATTER OF ZV2011-2
 FINDINGS OF FACT AND WRITTEN DECISION OF THE
 PLANNING AND ZONING COMMISSION FOR SOUTH FORK ESTATES**

TYPE OF REQUEST

A variance (ZV2011-2) request by Mr. Edward and Mrs. Carole Galloway [524 Galloway Dr. Lenore, ID 83541-5107] are requesting variance (ZV2011-2) to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

- Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
- Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
- Set aside the requirement to dedicate the access road to public use as required by § B.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

ORDINANCE STANDARDS

The following Clearwater County Subdivision Ordinance standards were considered by the Commission in deciding this request:

1. CCSO Article III.A requires that an application be submitted.
2. CCSO Article III.B requires that a fee be paid.
3. CCSO Article IV § D.2 requires an access road have a sixty (60) foot right-of-way.
4. CCSO Article IV § D.4.d requires that the minimum surfaced or finished width for a street or access road be twenty-four (24) feet.
5. CCSO Article IV § B requires that all streets be dedicated to public use.
6. CCSO Article VIII § B.1 requires that there are such special circumstances or conditions affecting the property that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable and cause and undue hardship.

7. CCSO Article VIII § B.2 requires that strict compliance with the requirements of the Ordinance would result in extraordinary topography, or such other conditions would result in inhibiting the achievement of the objectives of the Ordinance.
8. CCSO Article VIII § B.3 requires that the granting of the specified variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated.
9. CCSO Article VIII § B.4 requires that such variance will not violate the provisions of the Idaho Code.
10. CCSO Article VIII § B.5 requires that such variance will not have the effect of nullifying the interest and purpose of this Ordinance and the Comprehensive Plan.

FACTUAL BACKGROUND

The applicant has contacted the county with regard to the requirements for a variance to the proposed site. Mr. Ed and Mrs. Carole Galloway [524 Galloway Dr. Lenore, ID 83541] were present at the March 21, 2011, Planning and Zoning hearing and Mr. Galloway provided supporting testimony. Non-committal written correspondence was received from Idaho Department of Lands. Opposing testimony was provided by Garry Jones [PO Box 854, Lewiston, ID 83501], Don Ingle [3592 Freeman Creek Rd., Lenore, ID 83541-5098], Roger Kinyon [476 Aspen Ln, Lenore, ID 83541], and Chris Marvin [522 Brown Ave, Orofino, ID 83544]. Non-committal/other testimony was provided by Terry Golding [PO Box 1818, Lewiston, ID 83501] and Gerry Strahan [3240 Hwy 64 Kamiah, ID 83536]. A reasoned decision/findings of fact report was completed March 30, 2011. Ordinance standards providing the basis of this request are as follow:

1. A completed application, Grant of Easement, and written response was submitted January 11, 2011. The proper fee was paid.
2. Agenda was published March 03, 2011, in the Clearwater Tribune.
3. Exhibit A-Site plan shows access road Summer Range Drive providing access from county road Middle Road to South Fork Estates as an eighteen (18) foot wide surfaced road with a thirty (30) foot right-of-way width except where the actual property line between Ingle and Galloway meet, then it is only fifteen (15) feet at this intersection into the subdivision.
4. Email/written response received from Ed Galloway [freemancreek@cpcinternet.com] on January 20, 2011, for his variance request:
 - a. The relatively flat farm land terrain of the entire distance of this access (R/W) for approx. 2000' lends it's self to easily accommodating an 18' year around road way as will be built on the existing 30' deeded R/W. I need a variance from the currently required 60' to the existing 30' because this is a historical easement and also provides adequate space to install an 18' all weather road as was approved inside the said subdivision in the original approved prelim plat. Also, I would like to point out there is an additional 15' R/W to the east and adjoining the 30' R/W reserved for utilities where I plan an overhead power line.

- b. In this situation (a low density rural subdivision) the county ordinance we are applying whose basic tenants were adopted in the mid 70's does not take into account the growth of Rural Clearwater County, it talks about streets, arterials streets, alleys etc. As a land developer we must use variances to make the subs conform to an outdated ordinance. As we are doing in this situation we have to right mistakes made in the original approved plat.
- c. The access road addressed in this variance was determined not to need a variance during initial public discussions as it is exterior of the main sub. To try and correct these mistakes I am seeking a variance of the R/W from 60' to 30' in width, finished road width from 24' to 18', and a reduction from the 30'x18' variance reductions to 15' at the actual property line (bottleneck) for an infinitesimal distance. These variances do not change actual on the ground specs on the planned sub. The public welfare is not impacted at all since the changes will not have an impact on emergency vehicles. Nor will it impact other owners in the area as the design and implementation is entirely within parameters of the deeded R/W. and the original (approved) plat. Carole and I are doing this low density sub with applicable CC&Rs to limit impact on the neighbors both visually and physically.
- d. I have been assured by the county attorney and planning administrator that this request does not violate State Codes, it deals with county ordinances which can, by ordinance, be varied to fit unaddressed situations.
 - i. Variance (VAR060204) to vary the interior roads of the subdivision from twenty-four (24) feet to eighteen (18) feet was approved at the November 20, 2006, Planning and Zoning hearing.
- e. These variances are in sync with precedent ordnances over the last 30-40 years in Clearwater County. Our desire is to set the stage for jobs for excavators, concrete contractors, carpenters, electricians, plumbers, etc. in our county, along with an increased tax base as the Freeman Creek area continues to thrive as it provides recreation and getaways for residents of the surrounding area.
- 5. On February 2, 2011, Rob Simon, Clearwater County Road and Bridge Department Supervisor, and Bobbi Kaufman, Clearwater County Building and Planning Department Administrator, discussed the proposed access road, past conditions set, and the variance being requested and found the following:
 - a. The proposed access road built as an 18' surface on the existing 30' easement would be suffice for this access road; and
 - b. The conditions set in the past would need to be done and approved before the recording of the final plat.
- 6. Exhibit B-Email sent February 4, 2011, from Rob Simon [ccrb@orofino-id.com] regarding the road connecting the Middle Road to the proposed subdivision:

- a. Thursday, February 3, 2011, I was unable to access Mr. Galloway's road for an up-to-date inspection due to road conditions.
- b. As previously reported, in general the road is constructed within county specifications, with the following exceptions:
 - i. Cut banks need to be re-sloped to a 2:1 slope to alleviate soil erosion and ditch sloughing.
 - ii. All culverts need to be 18" minimum
 - iii. Realignment of approach to Middle Road to achieve a more 90 degree angle approach.
- c. Due to the general lay of the land, the lack of horizontal curves and minimal vertical curves, it is my opinion that the road as constructed, with an 18' driving surface, would be adequate.

7. Rob Simon as an ex-officio member stated at the March 21, 2011, hearing that:

- a. Middle Road is cataloged as a dirt non-maintained (not graded and drained secured) county road but not a county right-of-way; however, it is only maintained to Brock's property which is approximately one mile past the Brown Road intersection. The portion of the road that is maintained is classified as an all-weather road.
- b. There is enough room for the approach radius with the 30 foot easement and Middle Road's 50 foot petitioned right-of-way.
- c. Recorded petitions relating to the fact that what is now called Middle Road are the Crow petition recorded in 1910 that extends Middle Road from the intersections of Brown Road north easterly through Sections 09, 10, 15, 16 of Township 37 North Range 01 East and the JA Holliday petition recorded in 1911; however, it was never built.

8. Below is an explanation that was sent to Bobbi Kaufman, Clearwater County Building and Planning Administrator on February 28, 2011, by E. Clayne Tyler, Clearwater County Prosecuting Attorney, illustrating the existing easement and why the variance for the dedication of the access road is needed:

- a. If the owner of the property over which a road runs wants to dedicate the road to the public, the owner would have the power to do so (the Shinn's for example). The problem here is that Galloway does not own the land over which the road runs. Galloway only has an easement. Galloway can not dedicate the easement to the public as it would be an impermissible expansion of the scope of the easement.
 - i. To illustrate: A road crosses Shinn's land to access Property A. Galloway owns property A, and wants to give a neighboring landowner of property B the legal right to use the road crossing Shinn's property, Galloway could

not legally do so. That would be impermissibly expanding the scope of the easement beyond that originally intended when the easement was granted (the easement across Shinn's is granted to serve Property A for example. Only the Shinn's can expand it to serve property A and B. Galloway, the owner of property A does not have the legal right to give someone other than future buyers of Property A the right to cross Shinn's land).

- ii. The argument is that just as Galloway can't give Property B the right to cross Shinn's land, neither can Galloway give the general public the right to cross Shinn's land. That would be an impermissible expansion of the scope of the easement.

9. Exhibit C-The Grant of Easement in which Garry Jones highlighted (underlined below) in the second to last paragraph that states:

- a. This Grant of Easement is binding upon and inures to the benefit of the heirs, assigns, and successors of the parties hereto, and the easement for ingress and egress shall not be deemed a public right-of-way.

10. Throughout the Grant of Easement it refers to a perpetual non-exclusive easement for ingress and egress.

- a. Terry Golding, a surveyor, and Jerry Strahan, a realtor, both explain that as far as they know in their professions that non-exclusive means no limitations.

11. The request would be the minimum variance to alleviate the condition because of the standards of the easement.

12. All circumstances for granting a variance exist.

13. Property is not within an area of city impact.

CONCLUSIONS and DECISION

Based upon the factual record compiled and upon testimony received at the public hearing conducted for such purposes, the Planning and Zoning Commission determines that the minimum standards governing variances have been met; therefore, the Planning and Zoning Commission approved this request.



TRELAWNY J. BRUCE
Chairman, Planning & Zoning Commission



Date



CLEARWATER COUNTY BUILDING & PLANNING
150 Michigan Ave. • PO Box 586 • Orofino, ID 83544
(208) 476-4815 • Fax (208) 476-8994 • bp@clearwatercounty.org

**BEFORE THE CLEARWATER COUNTY PLANNING AND ZONING COMMISSION
FINDINGS OF FACT AND WRITTEN DECISION
IN THE MATTER OF APPEALED ZV2011-2 FOR
EDWARD AND CAROLE GALLOWAY/SOUTH FORK ESTATES**

TYPE OF REQUEST

A variance (ZV2011-2) request by Mr. Edward and Mrs. Carole Galloway [524 Galloway Dr. Lenore, ID 83541-5107] are requesting variance (ZV2011-2) to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

- Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
- Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
- Set aside the requirement to dedicate the access road to public use as required by § B.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

The Commission granted all three variances on March 21, 2011; however, an interested party and adjacent land-owners Edward L. and Donilee E. Shinn appealed this decision to the Clearwater County Board of County Commissioners. Per the appeal, the Board ordered each of the grants of variance remanded to the Commission to receive additional evidence and conduct additional fact finding by virtue of an additional public hearing. The purpose of the hearing is to determine whether or not the element of undue hardship exists, and to reevaluate the consideration of "undue hardship" in light of the remaining items to be found before a variance can be granted.

The Board of County Commissioners requested the Commission consider three questions for each of the requested variances.

1. Are there especial circumstances or conditions affecting the property such that the strict application of the provisions of the provisions of this Ordinance (referring to Article VIII of the Clearwater County Subdivision Ordinance) such that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable;
2. Are those special circumstances such that failure to grant a variance would cause an undue hardship to the developer; and

3. Would strict compliance with the requirements of the Ordinance result in inhibiting the achievement of the objectives of the Ordinance, or nullify the purpose of the Ordinance or the Comprehensive Plan?

ORDINANCE STANDARDS

The following Clearwater County Ordinance standards were considered by the Commission in deciding this request:

1. CCSO Article III § A & B requires that an application be submitted and that a fee be paid.
2. CCZO Article XV outlines all legal provisions regarding public notice and requirements regarding public hearings.
3. CCSO Article IV § D.2 requires an access road have a sixty (60) foot right-of-way.
4. CCSO Article IV § D.4.d requires that the minimum surfaced or finished width for a street or access road be twenty-four (24) feet.
5. CCSO Article IV § B requires that all streets be dedicated to public use.
6. CCSO Article VIII sets for the criteria for granting a variance.
 - a. CCSO Article VIII § A. Purpose: The Commission may grant, as a result of unique circumstances such as topographical-physical limitations or a planned unit development, a variance, as herein defined, from the provisions of this Ordinance on a finding that undue hardship results from the strict compliance with specific provisions of requirements of this Ordinance or that the application of such requirements or provision is impracticable.
 - b. CCSO Article VIII § B. Findings: No variance, as herein defined, shall be favorably acted upon by the Commission unless there is a finding, as a result of a public hearing, that all of the following exist:
 - i. That there are such special circumstances or conditions affecting the property that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable and cause and undue hardship.
 - ii. That strict compliance with the requirements of the Ordinance would result in extraordinary topography, or such other conditions would result in inhibiting the achievement of the objectives of the Ordinance.
 - iii. That the granting of the specified variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated.
 - iv. That such variance will not violate the provisions of the Idaho Code.

- v. That such variance will not have the effect of nullifying the interest and purpose of this Ordinance and the Comprehensive Plan.

FINDINGS OF FACT

The Clearwater County Planning and Zoning Commission held a public hearing on Monday, August 15, 2011. Mr. Edward and Mrs. Carole Galloway [524 Galloway Dr. Lenore, ID 83541] were present. Mr. Galloway submitted written testimony read into the record by Ms. Administrator and Mr. Galloway presented himself to the commission for questions. Non-committal written correspondence signed by Sam Charles, Ponderosa Area Manager Idaho Department of Lands was received via email from Julianne Shaw [JShaw@idl.idaho.gov] on 08/09/2011 and read into the record. Opposing testimony was provided by Mr. Don Ingle [3592 Freeman Creek Rd., Lenore, ID 83541-5098], Mr. Roger Kinyon [476 Aspen Ln, Lenore, ID 83541], and Mr. Garry Jones [PO Box 854, Lewiston, ID 83501]. Mr. Jones submitted pictures labeled 1-9 as exhibits to be added into the record. Mr. Galloway rebutted public comments.

This report was completed August 23, 2011. Findings of fact conclusions of law decision are as follows:

1. The applicant has contacted the county with regard to the requirements for a variance to the proposed site and the proper fee was paid.
2. Notice was published July 28, 2011, in the Clearwater Tribune, a newspaper of general circulation. Notices were sent to all adjacent property owners prior to the hearing, and notice of the public hearing were posted on the premises one (1) week prior to the hearing.
3. Exhibit A-Site plan shows access road Summer Range Drive providing access from county road Middle Road to South Fork Estates as an eighteen (18) foot wide surfaced road with a thirty (30) foot right-of-way width except where the actual property line between Ingle and Galloway meet, then it is only fifteen (15) feet at this intersection into the subdivision.
4. The applicant is asking to vary the right-of-way width from sixty (60) feet to thirty (30) feet and down to fifteen (15) at the actual property line (bottleneck).
 - a. A Grant of Easement was given to the Galloway's in 1998 that provides legal access to their property through the Shinn's property and connects to Middle Road. The language of the easement establishes that it is a thirty (30) foot easement, fifteen (15) on each side of the section line up to where Galloway's property meets Ingles, then it is only fifteen (15) at the property line, it is a perpetual non-exclusive easement, and the easement for ingress and egress shall not be deemed a public right-of-way.
 - i. The thirty (30) foot easement with the fifteen (15) foot bottle neck is not expandable; the adjacent landowner's lawyer stated that they have no inclination of ever selling additional easement.

5. The applicant is asking to vary the surfaced/finished width from twenty-four (24) feet to eighteen (18) feet and down to fifteen (15) feet at the actual property line (bottleneck).
 - a. A twenty-four (24) foot wide road would not fit on a thirty (30) foot wide easement.
 - b. To build a twenty-four (24) foot wide road can cost as much as \$35 per foot versus an eighteen (18) foot wide road at \$12-\$15 per foot.
 - c. At the property line where the thirty (30) foot easement ends and bottlenecks to fifteen (15) feet, a gate as allowed by the International Fire Codes will be installed.
 - i. Per approved variance VAR060204, the interior roads within the subdivision past the fifteen (15) foot gate will only be eighteen (18) feet wide with a sixty (60) foot wide easement.
 - d. The proposed subdivision is a low-density rural subdivision, having ten (10) acre aliquot parts; therefore, not generating a high volume of traffic.
 - e. Rob Simon, Clearwater County Road and Bridge Department Supervisor has declared that:
 - i. Middle Road is cataloged as a dirt non-maintained (not graded and drained secured) county road but not a county right-of-way; however, it is only maintained to Brock's property which is approximately one mile past the Brown Road intersection. The portion of the road that is maintained is classified as an all-weather road.
 - ii. There is enough room for the approach radius to Summer Range Drive with the 30 foot easement and Middle Road's 50 foot petitioned right-of-way.
 - iii. Recorded petitions relating to the fact that what is now called Middle Road are the Crow petition recorded in 1910 that extends Middle Road from the intersections of Brown Road north easterly through Sections 09, 10, 15, 16 of Township 37 North Range 01 East and the JA Holliday petition recorded in 1911; however, it was never built.
 - iv. In general access road Summer Range Drive is constructed within county specifications, with the following exceptions:
 1. Cut banks need to be re-sloped to a 2:1 slope to alleviate soil erosion and ditch sloughing.
 2. All culverts need to be 18" minimum
 3. Realignment of approach to Middle Road to achieve a more 90 degree angle approach.

- v. Due to the general lay of the land, the lack of horizontal curves and minimal vertical curves, it is my opinion that the road as constructed, with an 18' driving surface, would be adequate and not unsafe with the 30' easement.
 - vi. Exhibits 1-9-Pictures of the lay of the land submitted by Garry Jones. These pictures demonstrate that the land is relatively flat.
- 6. The applicant is asking to set aside the requirements to dedicate the access road to public use.
 - a. The language of the Grant of Easement states that the easement shall not be deemed a public right-of-way. The variance allows the developer to subdivide his property, provide access, maintain the private intent of the easement, and required those who purchase property within the subdivision to have a road maintenance agreement.
 - b. The Board of County Commissioners of Clearwater County, upon review of the record, tentatively found that the bare language of the easement itself does not prohibit subdivision of the property. The Board does not intend to look behind the bare language, nor to attempt to determine the historical intent of the original parties to the grant and receipt of the easement, but limits its review to the bare language of the document, which appears clear and unambiguous.
 - c. The requirements of the ordinance are intended for developments which tend to be a higher density checkerboard effect, using and expanding existing streets. This easement does not extend past Galloway's property nor can they give access to the properties past them. The lay of the land, and adjacent property use and trends, all indicate that development in the vicinity will continue, or increase, to become anything other than a rural, low density, agriculture based area. There is no need for the access road to be a public road, in that for all intents and purposes, it will not be expanded to access any adjacent or future subdivision.
- 7. Without the variance, the applicant is not able to subdivide his property as previously proposed.
- 8. All circumstances for granting the variances exist and undue hardship has been shown.
 - a. Requiring the applicant to comply with the strict enforcement of the ordinance requirements along with the additional costs involved would be unreasonable and would create an undue hardship on the applicant not justified when an eighteen (18) foot wide road built on the granted thirty (30) foot wide easement along with a fifteen (15) foot gate at the property line has been deemed adequate and safe to provide access to this proposed low density rural subdivision.

As to the questions specifically posed by the Board of County Commissioners:

9. Are there special circumstances or conditions affecting the property such that the strict application of the provisions of this Ordinance (referring to Article VIII of the Clearwater County Subdivision Ordinance) would clearly be impracticable or unreasonable?
 - a. The Commission finds that special circumstances or conditions do exist that affect the property so that strict application of the provisions of the ordinance would clearly be impractical or unreasonable.
 - b. Those special circumstances are discussed herein, but include the fact that the easement language prohibits dedication to the public, the easement width is only 30 feet, as opposed to 60 feet and neighboring landowners have stated no additional width will be transferred, due to quirk in legal descriptions there is a 15 foot bottleneck at the property line of the property proposed to be subdivided which is a highly unusual situation, the property is relatively flat and not subject to the requirement for wide cut banks or fill banks, lending itself to smaller easements and road surfaces than elsewhere in Clearwater County, together with the cost of compliance with the ordinance should compliance be possible, without any appreciable benefit.
 - c. Strict application of the ordinance would require dedication of the access road to the public, which the developer does not have the legal right to do, further, it would require a 60 foot easement, and a 24 foot traveled surface road. The developer has no way to obtain an easement in excess of the 30 foot easement currently provided, and the 30 foot wide easement is insufficient to construct a 24 foot wide traveled surface road.
 - d. Accordingly, strict application of the ordinance would prohibit the proposed development in its entirety.
 - e. However, the Commission finds that an appropriate road with an 18 foot traveled surface will be sufficient for serving the needs of a 10 lot subdivision, which estimating at full development approximately two (2) vehicle trips per residence, will equal a total of 20 vehicle trips per day. This is not anticipated to be a high traffic road requiring a wider traveled surface. The additional cost per square foot for construction of a 24 foot traveled surface road is also entirely unreasonable given the anticipated number of vehicle trips per day, and constitutes an undue burden on the developer.
 - f. Further, narrowing the traveled surface at one location to a width of 15 feet for the distance of approximately a gate will not materially impact the health, safety or provision of services to the anticipated purchases of the development property.
 - g. Finally, as the access road by the terms of the easement itself, and by virtue of the nature of the surrounding property, will not be utilized to support further development, there is no need to make it a public road.

- h. Thus, strict application of the ordinance, given the special circumstances that exist – which are unique to this specific property, in regard to the non-public easement, the cost of road construction, the lay of the property which is such that a narrower road can be properly constructed on a smaller easement, and the lack of future neighboring development, would be unreasonable.

10. Are those special circumstances such that failure to grant a variance would cause an undue hardship to the developer?

- a. In addition to the above, failure to grant the requested variances would result in the inability to subdivide the property into any portion in which any parcel is less than 20 acres in size. As such, an undue hardship would be caused to the developer. Further, the cost of compliance with the ordinances (such as the cost of constructing a 24 foot road surface), even if possible, would lead to an undue extreme expense with no benefit provided to the public, to neighboring landowners, to traffic, to the provision of services or to the health or safety of residents. As such, it would be an undue expense.

11. Would strict compliance with the requirements of the Ordinance result in inhibiting the achievement of the objectives of the Ordinance, or nullify the purpose of the Ordinance or the Comprehensive Plan?

- a. The purpose of the subdivision ordinances in general are set forth in Article I, Section C of the Subdivision Ordinance and is not re-printed here. The Commission finds strict compliance with the requirements of the ordinance do inhibit the achievement of the objectives as stated, including orderly development, given the unique circumstances of the subject property. Alternatively, the variances being granted to not impede or be detrimental to the public welfare, or injurious to the public welfare or be injurious to other property in the area, will not violate the provisions of Idaho Code, nor will nullify the interest and purpose of the Ordinance or Comprehensive Plan.

CONCLUSION

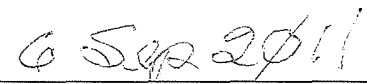
The requirements which the subdivision developer must show to establish the grounds for a variance, as described above, have been shown and met.

DECISION

Based upon all of the information and testimony given at the public hearing and in accordance with the Clearwater County Subdivision Ordinance and Zoning Ordinance, the Clearwater County Planning and Zoning Commission, as hearing board, hereby approves appealed variance request ZV2011-2.



TRELAUNY J. BRUCE
Chairman, Planning & Zoning Commission



Date

**DECISION BY
CLEARWATER COUNTY BOARD OF COMMISSIONERS
ON THE
APPEAL OF EDWARD and CAROLE GALLOWAY VARIANCES**

COMES NOW the Clearwater County Board of Commissioners (hereinafter "Board"), sitting as a quasi judicial board to hear the appeal from the Clearwater County Planning and Zoning Commission (hereinafter "Commission").

HISTORY/BACKGROUND: (ZV2011-2) A variance request by Edward & Carole Galloway to vary access road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

- o Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
- o Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
- o Set aside the requirement to dedicate the access road to public use as required by § B.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

(SUB060096) Final plat stage of the full platting procedure for Hidden Valley Subdivision, re-named Southfork Estates, a Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots: Lot 1) 13.14 acres, Lot 2) 9.23 acres, Lot 3) 9.81 acres, Lot 4) 10.09 acres, Lot 5) 10.33 acres, Lot 6) 11.28 acres, Lot 7) 9.84 acres, Lot 8) 6.67 acres, Lot 9) 8.98 acres, Lot 10) 13.08 acres. This is a continuation of the 17 November 2008 public hearing. This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1. This application was stayed until the appeal is heard on the variance.

DISCUSSION: The Board considered testimony on material given at the Commission hearings and reviewed the Commission's actions. On March 21, 2011, the Commission approved the variance application with conditions. On March 25, 2011, the Commission and Bobbi Kaufman (hereinafter "Kaufman") received Notice of Appeal by Garry W. Jones from Jones, Brower & Callery, PLLC on behalf of Edward L. and Donilee E. Shinn on the decision of the ZV2011-2 and SUB060096.

Appellant Edward L. and Donilee E. Shinn (hereinafter "Shinn") timely filed an appeal from the written decision of the Commission dated March 21, 2011, Number ZV2011-2 (grant of variances to Edward and Carole Galloway relating to the application for subdivision identified as SUB 060096), as well as the written recommendations to

the Board recommending approval of the application for subdivision and final subdivision plat, also dated March 21, 2011, Number SUB 060096.

The written recommendations to the Board relating to the subdivision plat SUB 060096 do not constitute a final decision but are recommendations only at this juncture and, therefore, are not ripe for appeal at this time. Further, pursuant to Clearwater County Subdivision Ordinance Article IX, Section B, proceedings on SUB 060096 are stayed pending the conclusion of the appeal of the variances granted in ZV2011-2.

PRIOR PROCEEDINGS: On May 23, 2006, Edward and Carole Galloway (hereinafter "Galloway") filed an application to subdivide a parcel of property of approximately 99.82 acres (100 acre aliquot part parcel) into 10 parcels ranging between 6 plus acres and 12 plus acres in size. The applicants utilized the Class B combined plat procedure identified in the Clearwater County Subdivision Ordinance. The subdivision was eventually identified as Southfork Estates. The various proceedings related to the application are listed in the Administrative Record, Exhibit 11, and are adopted herein by reference.

Galloway's proposed subdivision is to be accessed by an existing road located within a private easement, 30 feet in width, which begins at Middle Road, a Clearwater County public road, and crosses neighboring property owned by the Shinn's, and accesses the Galloway property. The grant of easement contains an anomaly, which causes the 30-foot wide easement to be restricted to 15 feet for an undefined but minuscule length at the boundary separating the Galloway and Shinn properties.

Galloway, on January 11, 2011, filed an application for three variances from the Clearwater County Subdivision Ordinance (Exhibit 4, Administrative Record). Galloway sought to vary the following:

1. To vary the requirement of Clearwater County Subdivision Ordinance Article 4.D.2 which requires access roads to be built within a minimum 60 foot wide right of way:

Galloway sought to vary the right of way for the access road from 60 feet to 30 feet to fall within the 30-foot wide existing ingress and egress easement. Further, Galloway sought to vary the required 60-foot right of way to 15 feet at the Shinn/Galloway property line, where the anomaly exists.

2. To vary the requirements of Clearwater County Subdivision Ordinance Article 4.D.4.d. which requires access roads to have a minimum 24-foot road surface or finished width.

Galloway sought to vary the traveled surface of the access road from 24 feet to 18 feet in width over the majority of the road surface, and to 15 feet at the anomaly site (boundary line).

3. To vary the requirement of Article 4, Section B of the Clearwater County Subdivision Ordinance which requires all arterial, collector, and other streets in a proposed subdivision to be dedicated to the public.

Galloway sought to vary the requirement of dedication to the public so that the access road could remain a private road, and not be dedicated to the public, in that the easement they hold specifically prohibits dedication to the public.

The Commission, following a public hearing held on March 21, 2011, granted Galloway each of the requested variances, and entered written findings of fact and conclusions of law dated April 4, 2011 (Exhibit 14, Administrative Record). In that order, the Commission did properly identify the controlling ordinance as set forth below.

On March 25, 2011, Shinn filed a notice of appeal. Shinn is an interested party, owning real property which borders upon the proposed Galloway subdivision. By letter dated March 25, 2011, counsel for Shinn stated as grounds for the appeal:

"No facts or testimony were presented which would authorize the issuances of a variance under the terms and conditions of the Clearwater County Subdivision Ordinance. Further, that the easement which the Galloways propose to use for access to the property does not allow that road to be utilized for easement for ingress and egress for parties other than Mr. And Mrs. Galloway. Finally, that it is not appropriate for a variance to be granted from the requirement that access to the subdivision be dedicated for public use." (Exhibit 1, Administrative Record).

LAW AND ANALYSIS: Legal authority for providing for variances from the strict application of planning and zoning ordinances is created in Idaho Code 67-6516.

Under Clearwater County's structure, the final decision as to whether or not to grant a variance rests within the Commission and not the Board (Article VII, Section A, Subdivision Ordinance) with appeals to be taken to the Board (Article IX, Section G, Subdivision Ordinance).

Article VIII of the Subdivision Ordinance sets forth the criteria for granting a variance. Those criteria are as follows:

Section A. Purpose: The Commission may grant, as a result of unique circumstances such as topographical-physical limitations or a planned unit development, a variance, as herein defined, from the provisions of this Ordinance on a finding that undue hardship results from the strict compliance with specific provisions of requirements of this Ordinance or that the application of such requirements or provisions is impracticable.

Section B. Findings: No variance, as herein defined, shall be favorable acted upon by the Commission unless there is a finding, as a result of a public hearing, that all of the following exist:

1. That there are such special circumstances or conditions affecting the property that the strict application of the provisions of this

Ordinance would clearly be impracticable or unreasonable and cause an undue hardship; in such cases, the developer shall first state his reasons in writing as to the specific provisions or requirements involved.

2. That strict compliance with the requirements of the Ordinance would result in extraordinary topography, or such other conditions would result in inhibiting the achievement of the objectives of the Ordinance.
3. That the granting of the specific variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated.
4. That such variance will not violate the provisions of the IDAHO CODE.
5. That such variance will not have the effect of nullifying the interest and purpose of this Ordinance and the Comprehensive Plan.

Each of items 1 - 5 must be found to exist before a variance can be granted.

At argument, counsel for the Shinn's argued that the Commission had no facts presented to it which would justify the Commission's finding that Item 1 above exists. Counsel focused argument on item 1 but did argue that the variance would potentially nullify the interest and purpose of the Ordinance.

In that the Board is sitting as an appellate board, guidance is found in Idaho Code Section 67-5279, applying to a Court review of a planning and zoning decision, as to the standard of review to apply:

- (1) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.
- (2) When the agency was not required by the provisions of this chapter or by other provisions of law to base its action exclusively on a record, the court shall affirm the agency action unless the court finds that the action was:
 - (a) in violation of constitutional or statutory provisions;
 - (b) in excess of the statutory authority of the agency;
 - (c) made upon unlawful procedure; or
 - (d) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

- (3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

- (4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.

In *Wohrle v. Kootenai County* 147 Idaho 267, 273-275, 207 P.3d 998, 1004 - 1006 (Idaho, 2009), the Idaho Supreme Court further discussed the standard of appellate review, specifically in the context of an application for a variance:

In reviewing the district court, this Court examines the county board of commissioners' record independently of the district court's decision. *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, 207, 159 P.3d 840, 844 (2007). A reviewing court must affirm the county board of commissioners' action unless the board's decision (a) violates statutory or constitutional provisions; (b) exceeds the statutory authority of the board; (c) is made upon unlawful procedure; (d) is not supported by substantial evidence in the record; or (e) is arbitrary, capricious, or an abuse of discretion. *Id.* at 208, 159 P.3d at 845; I.C. § 67-5279(3).

The approval or denial of a variance request is within the discretion of the county board of commissioners, subject to the requirements of I.C. § 67-5279. See I.C. §§ 67-6516, 6519. The applicant must prove to the board that he will suffer "undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest." I.C. § 67-6516. There is a strong presumption in favor of the validity of the actions of county boards of commissioners in interpreting and applying their own ordinances. *Sanders Orchard v. Gem County*, 137 Idaho 695, 698, 52 P.3d 840, 843 (2002).

Furthermore, when analyzing a county board of commissioners' decision to determine if it was supported by substantial evidence pursuant to I.C. § 67-5279(3)(d), this Court will not substitute its judgment for that of the board regarding the weight of the evidence on questions of fact. *Id.* The county board of commissioners' factual determinations are binding on the reviewing court, even where there is conflicting evidence, so long as the determinations are supported by substantial and competent evidence. *Lane Ranch P'ship v. City of Sun Valley*, 144 Idaho 584, 590, 166 P.3d 374, 380 (2007). Substantial and competent evidence is "relevant evidence which a reasonable mind might accept to support a conclusion." *Id.* (citing *Lamar Corp. v. City of Twin Falls*, 133 Idaho 36, 43, 981 P.2d 1146, 1153 (1999)).

In *Lane Ranch*, this Court found that the evidence did not support the city's finding that "chang[ing] the Zoning District designation for the Subject Property from OR-1 to RA would require amending the Annexation Agreement," because the Agreement did not require amendment. 144 Idaho at 590-91, 166 P.3d at 380-81. The Court found that it was impossible to tell how much the city had relied on that mistaken interpretation in its denial of the zoning applications. *Id.* Similarly, in *Sanders Orchard v. Gem County*, 137 Idaho 695, 52 P.3d 840 (2002), this Court found that a county board of commissioners' finding that sewer

and water lines would likely be extended to the area of a proposed subdivision in the foreseeable future was unsupported by substantial evidence in the record. In *Sanders*, there was no oral testimony or evidence submitted indicating that the sewer and water lines would be extended to that area. *Id.* at 702-03, 52 P.3d at 846-47.

Both *Sanders* and *Lane Ranch*, identified in the *Wohrle* decision, involved factual findings by the agency on which no oral testimony or evidence was submitted.

I. The Commission, in finding that Galloway had met his burden of showing that special circumstances affecting the property would cause the strict application to be impractical, and would also cause undue hardship, was not supported by substantial evidence on the record as a whole.

For the purposes of this appeal to the Board, due to the access road at issue being an easement which crosses the Shinn's property and accesses neighboring property, the Board finds the Shinns to have a substantial right which may be prejudiced, and thus have standing to appeal.

An exhaustive review of the record of proceedings at the Commission level reveals no testimony having been presented as to the factor of undue hardship. Review of the application for each variance itself reveals no declaration of what undue hardship may result if strict compliance with the ordinance is required (in spite of the question being specifically asked). No testimony was provided, and undue hardship was not referenced in staff reports.

Although this Board cannot substitute its judgment for the judgment of the Commission, it is still incumbent upon the Commission to restrict its decisions to those facts on the record. This Board cannot uphold the Commission's decision without substantial and competent evidence on the issue of undue hardship, i.e., relevant evidence which a reasonable mind might accept to support a conclusion, for each of the variances requested by Galloway. The Board has no choice but to reverse the decision of the Commission with regard to the issue of "undue hardship". As the issues of "undue hardship" are intimately tied to the requirement that the "undue hardship" be as a result of special circumstances affecting the property (and not applicable in general to all property in the geographic region or neighborhood), and with an analysis of whether or not strict compliance with the terms of the Ordinance would inhibit the achievement of the objectives of the Ordinance or the Comprehensive Plan, then these issues are remanded for reconsideration as well.

The Board hereby orders each of the three grants of variances remanded to the Commission to receive additional evidence and conduct additional fact finding, by virtue of an additional public hearing, to determine whether or not the element of undue hardship exists, and to re-evaluate the consideration of "undue hardship" in light of the remaining items to be found before a variance can be granted.

As guidance, the Board requests the Commission consider the following:

1. Are there are special circumstances or conditions affecting the property such that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable, and
 2. Are those special circumstances such that failure to grant a variance would cause an undue hardship to the developer, and
 3. Would strict compliance with the requirements of the Ordinance result in inhibiting the achievement of the objectives of the Ordinance, or nullify the purpose of the Ordinance or the Comprehensive Plan?
- II. Also raised on appeal is the issue as to whether the easement which the Galloways propose to use for access to the property allows the access road to be utilized for ingress and egress for parties other than Galloway.

The Board, upon review of the record, tentatively finds that the bare language of the easement itself does not prohibit subdivision of the property. The Board does not intend to look behind the bare language, nor to attempt to determine the historical intent of the original parties to the grant and receipt of the easement, but limits its review to the bare language of the document, which appears clear and unambiguous.

Sufficient evidence was entered at the Commission level to support the finding that the easement is legally adequate to allow subdivision. It is felt that the proper forum for challenging the intent and scope of an easement of this nature is through the Courts rather than the Board.

This tentative decision is not certified as final, and will not be so certified until the matter is returned from the Commission following the above ordered hearing on remand, and is thus not ripe for appeal at this juncture. A final order will be issued following the conclusion of the additional hearings ordered above

CONCLUSIONS: Based upon the factual record compiled and upon testimony received at the public hearing conducted for such purposes, the Board determines that the Commission's decision on the variance must be repealed and remanded back to the Commission to be re-heard at a public hearing with specific instructions to review and identify whether or not there is undue hardship as required by the county ordinance.

DECISION: Therefore, it is the ultimate conclusion of the Board to overturn the Commission decision and to remand the issue of undue hardship back to the Commission with specific instructions to focus and clearly define whether it is an undue hardship in order to grant a variance.

In addition, the Board reserves the judgment of every other matter contained in this appeal excepting the undue hardship question that is remanded back to the Commission.

DATED THIS 29th DAY OF July, 2011

Don Ebert
Don Ebert, Chairman

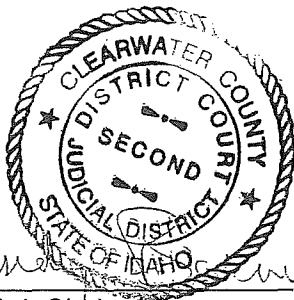
Stan Leach
Stan Leach, Commissioner

ABSTAINED

Carole Galloway, Commissioner

Attest:

Carrie Bird
Carrie Bird, Clerk



DECISION BY:
CLEARWATER COUNTY BOARD OF COMMISSIONERS
ON THE
APPEAL OF EDWARD and CAROLE GALLOWAY VARIANCES
(ZV2011-2)

COMES NOW the Clearwater County Board of Commissioners (hereinafter "Board"), sitting as a quasi appellate board to hear the appeal of the decision from the Clearwater County Planning and Zoning Commission (hereinafter "Commission"), and makes the following findings and enters the following written order:

This decision relates only to the request for variance filed as ZV2011-2 in the records of Clearwater County, Idaho. The written recommendations of the Planning and Zoning Commission to the Board of County Commissioners relating to the subdivision plat filed as SUB 060096 do not constitute a final decision, but are recommendations only at this juncture, therefore are not ripe for appeal at this time.

PRIOR PROCEEDINGS:

On May 23, 2006, Ed and Carole Galloway, (hereinafter Galloway), filed an application to subdivide a parcel of property approximately 99.82 acres (100 acre aliquot part parcel) into 10 parcels ranging between 6 plus acres and 12 plus acres in size. The applicants utilized the Class B combined plat procedure identified in the Clearwater County Subdivision Ordinance. The subdivision was eventually identified as Southfork Estates.

Galloway, on January 11, 2011, filed an application for three variances from the Clearwater County Subdivision Ordinance. Galloway sought to vary the requirement of Clearwater County Subdivision Ordinance Article 4.D.2 which requires access roads to be built within a minimum 60 foot wide right of way, to vary the requirements of Clearwater County Subdivision Ordinance Article 4.D.4.d. which requires access roads to have a minimum twenty four (24) foot road surface or finished width; and to vary the requirement of Article 4 Section B of the Clearwater County Subdivision Ordinance which requires all arterial, collector, and other streets in a proposed subdivision to be dedicated to the public.

The Commission, following a public hearing held on March 21, 2011, granted Galloway each of the requested variances, and entered a written findings of fact and conclusions of law, dated April 4, 2011. On March 25, 2011, Shinn filed a notice of appeal, stating as grounds for appeal that:

"No facts or testimony were presented which would authorize the issuances of a variance under the terms and conditions of the Clearwater County Subdivision Ordinance. Further, that the easement which the Galloways propose to use for access to the property

does not allow that road to be utilized for easement for ingress and egress for parties other than Mr. And Mrs. Galloway. Finally, that it is not appropriate for a variance to be granted from the requirement that access to the subdivision be dedicated for public use.”.

The Clearwater County Commissioners, sitting as a quasi appellate board, heard the appeal and issued an order remanding the matter to the Planning and Zoning Commission for further findings. As guidance, the Board requests the Commission consider the following:

1. Are there special circumstances or conditions affecting the property that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable, and
2. Are those special circumstances such that failure to grant a variance would cause an undue hardship to the developer, and
3. Would strict compliance with the requirements of the Ordinance result in inhibiting the achievement of the objectives of the Ordinance, or nullify the purpose of the Ordinance or the Comprehensive Plan.

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1. The applicant, Galloway, presented insufficient evidence to authorize the issuance of a variance.
2. Any undue hardship were of Galloway’s own making in that the property was purchased in 1985, when the existing standards were in place, and hardship of the applicant’s own making cannot be the grounds for the granting of a variance.

A third issue raised in the appellant’s first notice of appeal, that the access easement itself does not allow for subdivision of the Galloway property at all, which was held by the Board of County Commissioners pending remand to the Commission, is finalized herein as well. Appellants further re-assert as grounds for appeal that it is not appropriate for a variance to be granted from the requirement that the access road be dedicated for public use.

LAW / STANDARD OF REVIEW:

The legal authority under State statute, and County ordinance authorizing the ability to grant a variance to an subdivision applicant, and the terms required for granting such a variance,

are set forth in the Board of County Commissioners order dated July 29, 2011, and are adopted herein by reference.

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- (1) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. (2) When the agency was not required by the provisions of this chapter or by other provisions of law to base its action exclusively on a record, the court shall affirm the agency action unless the court finds that the action was:
- (a) in violation of constitutional or statutory provisions;
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- (4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.

I. DID THE APPLICANT, GALLOWAY, PRESENT SUFFICIENT EVIDENCE TO AUTHORIZE THE ISSUANCE OF THE REQUESTED VARIANCES.

The Planning and Zoning Commission found, pursuant to the order dated April 4, 2011, and the order dated September 6, 2011, that Galloway had presented sufficient evidence to authorize the issuance of the requested variances.

To uphold the Commission's findings, the Board must consider, in light of the standard of review identified above, Article VIII of the Clearwater County Subdivision Ordinance which provides the standards for granting a variance, namely: 1. Whether an undue hardship would result from strict compliance with the ordinance; 2. Whether there are special circumstances or conditions making strict application of the ordinance impracticable or unreasonable; 3. Whether the purpose or intent of the ordinance would be nullified, or inhibited, if the variance was

granted; and 4. Whether the granting of the variance would be detrimental to the public welfare or injurious to other property in the area, or a violation of Idaho Code.

The requirement to show an “undue hardship” exists in State statute as well (I.C. 67-5279). There exists limited guidance from state of Idaho statutes or case law as to what constitutes an “undue hardship”. Undue hardship is some condition which is analyzed on a case by case basis (*Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009) due to characteristics of the site (*Wohrle* at 147 Idaho 273-274; 207 P.3d 1004-05), or due to special circumstances or conditions, which are peculiar to the property and not applicable generally to land or buildings in the neighborhood (*Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 909, 693 P.2d 1108, 1111 (Idaho App., 1984), and which is not in conflict with the public interest. I.C. § 67-5279.

An undue hardship can be created due to exorbitant expense of a requirement not justified by the development, such as with respect to excessive road construction requirements to support a relatively few number of daily vehicle trips caused by the development (see *Blaha v. Board of Ada County Com'rs*, 134 Idaho 770, 773, 9 P.3d 1236, 1239 (Idaho 2000) for a Board of County Commissioners finding of undue hardship due to an expense vs. benefit analysis, cited with approval by the reviewing court).

In this case, evidence to the Commission found the road as varied provided proper, safe access, that the easement necessary to support the road as varied was adequate, that obtaining a wider easement to comply with the ordinance was impossible, that dedicating that easement to the public was impossible due to the nature of the easement, and unnecessary in that there would likely be no further developments or subdivisions using the same road for access, and that the cost of construction, even if it were possible, to build a road which complied with the ordinance was unduly exorbitant, especially in light of the 10 to 20 vehicle trips per day which is all that is anticipated for this low density very rural development at maximum housing capacity. The road as varied (easement, road width, public dedication) was deemed adequate by reviewing professionals including the Clearwater County Road Department and the Evergreen Fire District.

Failure to grant the requested variances would have the result in the inability to subdivide the real property into less than 20 acre parcels, without any control or jurisdiction over the road at all by Clearwater County, and with the possibility of more residences being in place and a higher traffic load than as currently proposed, due to the lack of controlling ordinances being in place for 20 acre or larger parcels. Thus, the public interest may actually be hurt by failure to grant the variances.

Further, Galloway provided a letter which was read into the record. The letter references each of the requirements for granting a variance and provides grounds for finding in his favor on each of those requirements. The Clearwater County Planning and Zoning Administrator also prepared and submitted staff recommendations identifying the required findings, and addressing them, with a recommendation to grant the requested variances.

In prior proceedings, testimony was submitted from the Clearwater County Road and Bridge Department Supervisor, Rob Simon, indicating that the proposed private road access (the subject of the three variance requests) would be adequate for safe, year round travel, especially given the low density rural nature of the development. That information was provided again in the remand hearing of August 15th. (See Transcript pages 10 - 15).

Mr. Galloway followed up his written testimony with an oral statement, again discussing the cost, public benefit, low density rural nature of the proposed development. (See Transcript pages 43 - 50).

The Board finds that sufficient evidence was presented to justify the Commission's findings.

II. WAS ANY UNDUE HARDSHIP THAT EXISTS A RESULT OF GALLOWAY'S OWN MAKING, THUS DISQUALIFYING HIM FROM BEING ALLOWED A VARIANCE AS REQUESTED.

The Appellants point to an assertion that undue hardship cannot be self created as grounds for their current appeal, and argue that the applicant, Galloway, purchased the land in 1985, at a time when the existing ordinances were in effect; therefore, he caused his own hardship by purchasing land knowing development would require a variance. Appellants argue that Dawson Enterprises, Inc. v. Blaine County, 98 Idaho 506, 516, 567 P.2d 1257, 1267 (1977) applies to support their position.

In *Dawson*, the applicant owned an option to purchase land zoned for agricultural and residential uses only. Dawson filed a request for a land use change, seeking to have his parcel zoned as commercial for use as an automobile dealership. He then exercised his purchase option, bought the land, and claimed (among other things) that an undue financial hardship would now arise if the zoning change was not allowed.

Dawson presents facts very different from this case. Here, the land was purchased in 1985. Approximately 20 years elapsed before Galloway sought to subdivide the property. Further, Galloway's property has always been zoned for residential purposes, which is the use he seeks to make of his property. Galloway seeks variances for road easements and widths incidental to that allowed use. Dawson, alternatively, bought his property after filing a request for a variance, and knowing full well that the entire use he intended was disallowed, and gambled on obtaining a zoning change, or a variance to allow his use.

Changing the land use for a specific parcel of land to something the entire neighborhood is not zoned for presents a very different question than obtaining a variance for a road easement and width to support an already authorized and allowed use. To change the land use entirely raises the issue of spot zoning, something not at issue here, and which the *Dawson* court spent

significant time discussing. Of note, all cases citing *Dawson* involve spot zoning or requests for variances to change land use entirely, rather than variances for roads incidental to an already authorized land use.

With regard to hardship in the context of spot zoning, the *Dawson* court held as follows:

Moreover, we cannot overlook the fact that Dawson's hardship in this case is self-inflicted since the option to purchase was exercised in full knowledge that the land was zoned residential and that a variance for commercial use had not been granted. As the Supreme Court of Colorado said, under similar circumstances: "Nopro's land investment was made in full knowledge of the zoning limitations. It took the calculated risk that it could break the zoning use barrier and thereby double the profit from its investment. Having been denied the means by which this might be accomplished, it claims hardship. If hardship exists under the facts of this case and we hold that it does not it was incurred voluntarily by the choice of Nopro and was self-inflicted." *Nopro Co. v. Town of Cherry Hills Village, 180 Colo. 217, 504 P.2d 344, 349 (1973). In Nopro, as indicated, the developer was realizing a substantial profit on his investment and was complaining only that it could not make twice as much. Manger v. City of Chicago, 121 Ill.App.2d 358, 257 N.E.2d 473 (1970), was closer to the economic facts of this case in that plaintiff had actually put out cash for land that would be worth much less if the zoning variance was not granted. Nonetheless, the Illinois court reached the same conclusion: "Plaintiffs purchased the two parcels comprising the subject property with full knowledge of its zoning restrictions. While a party who purchases property in the face of the existing zoning classification is not precluded from challenging the validity of the zoning classification, his purchase in the face of the existing zoning classification is one factor to be considered. (Citation omitted.) Plaintiffs admit that they purchased the two parcels comprising the subject property with the intention of endeavoring to secure a change of zoning classification and described their plans as a '*calculated risk*' in paying \$100,000.00 for what they knew to be the then true value of \$15,000.00." *257 N.E.2d at 479. Accordingly, the variance was denied. Dawson Enterprises, Inc. v. Blaine County, 98 Idaho 506, 516, 567 P.2d 1257, 1267 (1977).

Dawson and those cases cited therein go on to describe that self inflicted hardship, if it exists, is a factor to be considered in whether or not to grant or deny a variance, but is not controlling. Therefore, this Board of Commissioners cannot say that the Planning and Zoning Commission abused its discretion when deciding to grant the variances in spite of the argument of self inflicted hardship and finds in favor of Galloway on this issue.

III. DOES THE BARE LANGUAGE OF THE EASEMENT OBTAINED BY GALLOWAY PROHIBIT HIM FROM SUBDIVIDING?

In the context of planning and zoning, it is not the practice or policy of the Clearwater County Planning and Zoning Commission, or the Board of Commissioners, to become embroiled in disputes between landowners regarding the intent of easements which have been granted. The County looks at the bare language of the easement itself, and if that language appears clear and unambiguous to the County, sufficient to provide a right of access to the proposed subdivision, the County will not delve further into the intent of the parties regarding that easement. The Clearwater County planning and zoning structure is not intended, nor shall be utilized, as a substitute for a court of law to resolve easement disputes between landowners.

Courts recognize this approach when interpreting easements in general:

"In construing an easement in a particular case, the instrument granting the easement is to be interpreted in connection with the intention of the parties, and the circumstances in existence at the time the easement was granted and utilized. Dr. James Cool, D.D.S. v. Mountainview Landowners Co-op. Ass'n, Inc., 139 Idaho 770, 773, 86 P.3d 484, 487 (2004)

The existence of ambiguity determines the standard of review of a lower court's interpretation of a contract or instrument. Union Pac. R.R. Co. v. Ethington Family Trust, 137 Idaho 435, 437-*38, 50 P.3d 450, 452-*53 (2002).

In the absence of ambiguity, the document must be construed in its plain, ordinary and proper sense, according to the meaning derived from the plain wording of the instrument. See Juker v. American Livestock Ins. Co., 102 Idaho 644, 645, 637 P.2d 792, 793 (1981). C & G, Inc. v. Rule, 135 Idaho 763, 765, 25 P.3d 76, 78 (2001)

The easement in question (Appeal Record Section 13) provides a bare, unequivocal grant of non-exclusive easements to Galloway, and Galloway's heirs, successors and assigns, with the only limitation being as follows: "This Grant of Easements is binding upon and enures to the benefit of the heirs, assigns, and successors of the parties hereto, and the easement for ingress and egress shall not be deemed a public right-of-way."

"Public right-of-way" is a term of art, defined in Idaho Code Section 40-117 (9) as a right of way open to the public and under the jurisdiction of the public highway agency, where the agency has no obligation to construct or maintain the same. With the grant of a variance to Galloway allowing the access road to remain a private, rather than a public road, then the easement appears on its face for planning and zoning purposes, to allow for development.

This is not meant nor is to be construed as a finding based upon a disputed hearing as to the intent of the parties to the easement itself, but is to be construed as a finding solely for agency planning and zoning purposes.

Accordingly, the Board of County Commissioners, sitting as an appellate board to review the grant of variances by the Clearwater County Planning and Zoning Commission finds that such grant was not arbitrary, capricious, and was supported by substantial competent evidence, and was not made in violation of law or procedure.

Thus the grant of each of the three variances is UPHELD.

Any stay of proceedings for the pending concurrent subdivision applications is lifted, and the same shall be scheduled for hearing.

DATED this 21st day of November, 2011.



DON EBERT
Chairman

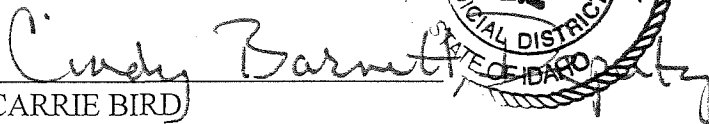


STAN LEACH
Commissioner

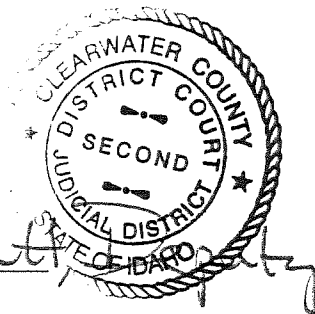
ABSTAINED

CAROLE GALLOWAY

ATTEST:



CARRIE BIRD
Clerk



**IN THE MATTER SUB060096 SOUTH FORKS ESTATES
FINDINGS OF FACT
AND
WRITTEN DECISION OF THE
BOARD OF COUNTY COMMISSIONERS,
CLEARWATER COUNTY**

TYPE OF REQUEST:

(SUB060096) Final plat stage of the full platting procedure for Hidden Valley Subdivision re-named Southfork Estates, a Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots: Lot 1) 13.14 acres, Lot 2) 9.23 acres, Lot 3) 9.81 acres, Lot 4) 10.09 acres, Lot 5) 10.33 acres, Lot 6) 11.28 acres, Lot 7) 9.84 acres, Lot 8) 6.67 acres, Lot 9) 8.98 acres, Lot 10) 13.08 acres. This is a continuation of the 17 November 2008 public hearing. This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

ORDINANCE STANDARDS:

The following Ordinance standards were considered by the Board of County Commissioners in the making their decision to this request:

- Clearwater County Subdivision Ordinance (CCSO) Article III. A and Article III. B, requires an application be submitted and requires a fee be paid
- CCSO Article III. 1.8.b requires notice of public hearing to be published
- CCSO Article III Section A requires no subdivision shall be approved unless first the North Central District Health Department inspects and issues a site evaluation
- CCSO Article III.I.10 requires the Final Plat be submitted within one year from date of preliminary approval
- CCSO-Article III.J.1 requires after preliminary approval, the developer shall cause a final plat be prepared and submitted at least five working days prior to the Commission meeting
- CCSO-Article III.J.2 specifies contents of the Map Page of the Final Plat
- CCZO Article IV Section 404.3 in a Low Density Rural District (F-1) minimum lot depth and width must be two hundred fifty (250) feet; minimum required lot area is five (5) acres;
- CCSO-Article III.J.3 lists additions that the Commission may also require to Map Page
- CCSO-Article III.J.4 specifies the contents of the Certification Sheet of the Final Plat
- Any property within the designated area of impact of a city, said city shall be afforded an opportunity for review and comment

FACTUAL BACKGROUND:

The applicants have contacted the County with regard to the requirements for a Subdivision to the proposed site. The subject application requests authorization to subdivide their property into 10 lots. Mr. Ed and Mrs. Carole Galloway were present at

the March 21, 2011, Planning and Zoning hearing and provided testimony in support of the application. A findings of fact report was completed April 4, 2011. Ordinance standards were found to be completed. Additional factual details are found in the application material, Staff Report and Commission Findings of Fact.

DISCUSSION:

The hearing before the County Commissioners was held December 12, 2011, Planning & Zoning Administrator read into record the findings from the P&Z Commission. The Contents of Certification Sheet of Final Plat will be reviewed by Geographic Mapping Consultants, Inc (GMCI), contracted County Engineer, to verify all items to be in compliance with requirements under Title 50, Chapter 13 of the IDAHO CODE and items within our ordinance. Items which appear to be in compliance; Owner certification, NCDHD, Surveyor, Planning and Zoning, Highway District and County Treasurer and Recorder's certifications. Final Plat appears to comply with the approved preliminary plat. The P&Z recommended Board approval of this request. Also a recommendation was made on the final plat statements include a reference to the variances of road access and public dedication.

CONCLUSIONS:

Based upon the factual record compiled and upon testimony received at the public hearing conducted for such purposes, the County Commissioners determine, that the Subdivision request by Mr. Edward and Mrs. Carole Galloway should be approved. The primary rationale for approving this request was due to the P&Z recommendation and that applicants had met the requirements of Article III, Section D of the Clearwater County Subdivision Ordinance.

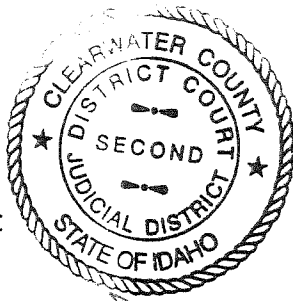
DECISION:

Therefore it is the ultimate conclusion of the Clearwater County Commissioners that the proposal submitted as the Final plat stage of the full platting procedure for South Fork Estates, a Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots: Lot 1) 13.14 acres, Lot 2) 9.23 acres, Lot 3) 9.81 acres, Lot 4) 10.09 acres, Lot 5) 10.33 acres, Lot 6) 11.28 acres, Lot 7) 9.84 acres, Lot 8) 6.67 acres, Lot 9) 8.98 acres, Lot 10) 13.08 acres. This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID; is consistent with the requirements set forth in Article III, Section D of the Clearwater County Subdivision Ordinance. No substantial evidence was received which would indicate that the request would conflict with any of the standards set forth therein. Accordingly, the Subdivision request is hereby approved. The final plat will contain on the Certification Sheet reference to the Variances passed and shall read regarding the "non-dedication" of the access and interior roads to be a public road.

DATED THIS 19th DAY OF DECEMBER 2011



Don Ebert, Chairman



ATTEST:

Carrie Bird Deputy
Carrie Bird, Clerk

Stan Leach
Stan Leach, Commissioner

Abstained CKG
Carole Galloway, Commissioner

DECISION BY:
CLEARWATER COUNTY BOARD OF COMMISSIONERS
ON THE
APPEAL OF EDWARD and CAROLE GALLOWAY VARIANCES
(ZV2011-2)

COMES NOW the Clearwater County Board of Commissioners (hereinafter "Board"), sitting as a quasi appellate board to hear the appeal of the decision from the Clearwater County Planning and Zoning Commission (hereinafter "Commission"), and makes the following findings and enters the following written order:

This decision relates only to the request for variance filed as ZV2011-2 in the records of Clearwater County, Idaho. The written recommendations of the Planning and Zoning Commission to the Board of County Commissioners relating to the subdivision plat filed as SUB 060096 do not constitute a final decision, but are recommendations only at this juncture, therefore are not ripe for appeal at this time.

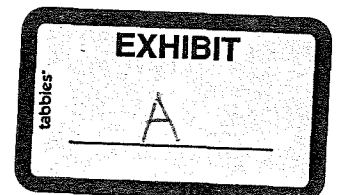
PRIOR PROCEEDINGS:

On May 23, 2006, Ed and Carole Galloway, (hereinafter Galloway), filed an application to subdivide a parcel of property approximately 99.82 acres (100 acre aliquot part parcel) into 10 parcels ranging between 6 plus acres and 12 plus acres in size. The applicants utilized the Class B combined plat procedure identified in the Clearwater County Subdivision Ordinance. The subdivision was eventually identified as Southfork Estates.

Galloway, on January 11, 2011, filed an application for three variances from the Clearwater County Subdivision Ordinance. Galloway sought to vary the requirement of Clearwater County Subdivision Ordinance Article 4.D.2 which requires access roads to be built within a minimum 60 foot wide right of way, to vary the requirements of Clearwater County Subdivision Ordinance Article 4.D.4.d. which requires access roads to have a minimum twenty four (24) foot road surface or finished width; and to vary the requirement of Article 4 Section B of the Clearwater County Subdivision Ordinance which requires all arterial, collector, and other streets in a proposed subdivision to be dedicated to the public.

The Commission, following a public hearing held on March 21, 2011, granted Galloway each of the requested variances, and entered a written findings of fact and conclusions of law, dated April 4, 2011. On March 25, 2011, Shinn filed a notice of appeal, stating as grounds for appeal that:

"No facts or testimony were presented which would authorize the issuances of a variance under the terms and conditions of the Clearwater County Subdivision Ordinance. Further, that the easement which the Galloways propose to use for access to the property



does not allow that road to be utilized for easement for ingress and egress for parties other than Mr. And Mrs. Galloway. Finally, that it is not appropriate for a variance to be granted from the requirement that access to the subdivision be dedicated for public use.”.

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1. Are there special circumstances or conditions affecting the property that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable, and
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1. The applicant, Galloway, presented insufficient evidence to authorize the issuance of a variance.
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I. DID THE APPLICANT, GALLOWAY, PRESENT SUFFICIENT EVIDENCE TO AUTHORIZE THE ISSUANCE OF THE REQUESTED VARIANCES.

The Planning and Zoning Commission found, pursuant to the order dated April 4, 2011, and the order dated September 6, 2011, that Galloway had presented sufficient evidence to authorize the issuance of the requested variances.

To uphold the Commission's findings, the Board must consider, in light of the standard of review identified above, Article VIII of the Clearwater County Subdivision Ordinance which provides the standards for granting a variance, namely: 1. Whether an undue hardship would result from strict compliance with the ordinance; 2. Whether there are special circumstances or conditions making strict application of the ordinance impracticable or unreasonable; 3. Whether the purpose or intent of the ordinance would be nullified, or inhibited, if the variance was

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An undue hardship can be created due to exorbitant expense of a requirement not justified by the development, such as with respect to excessive road construction requirements to support a relatively few number of daily vehicle trips caused by the development (see *Blaha v. Board of Ada County Com'rs*, 134 Idaho 770, 773, 9 P.3d 1236, 1239 (Idaho 2000) for a Board of County Commissioners finding of undue hardship due to an expense vs. benefit analysis, cited with approval by the reviewing court).

In this case, evidence to the Commission found the road as varied provided proper, safe access, that the easement necessary to support the road as varied was adequate, that obtaining a wider easement to comply with the ordinance was impossible, that dedicating that easement to the public was impossible due to the nature of the easement, and unnecessary in that there would likely be no further developments or subdivisions using the same road for access, and that the cost of construction, even if it were possible, to build a road which complied with the ordinance was unduly exorbitant, especially in light of the 10 to 20 vehicle trips per day which is all that is anticipated for this low density very rural development at maximum housing capacity. The road as varied (easement, road width, public dedication) was deemed adequate by reviewing professionals including the Clearwater County Road Department and the Evergreen Fire District.

Failure to grant the requested variances would have the result in the inability to subdivide the real property into less than 20 acre parcels, without any control or jurisdiction over the road at all by Clearwater County, and with the possibility of more residences being in place and a higher traffic load than as currently proposed, due to the lack of controlling ordinances being in place for 20 acre or larger parcels. Thus, the public interest may actually be hurt by failure to grant the variances.

Further, Galloway provided a letter which was read into the record. The letter references each of the requirements for granting a variance and provides grounds for finding in his favor on each of those requirements. The Clearwater County Planning and Zoning Administrator also prepared and submitted staff recommendations identifying the required findings, and addressing them, with a recommendation to grant the requested variances.

In prior proceedings, testimony was submitted from the Clearwater County Road and Bridge Department Supervisor, Rob Simon, indicating that the proposed private road access (the subject of the three variance requests) would be adequate for safe, year round travel, especially given the low density rural nature of the development. That information was provided again in the remand hearing of August 15th. (See Transcript pages 10 - 15).

Mr. Galloway followed up his written testimony with an oral statement, again discussing the cost, public benefit, low density rural nature of the proposed development. (See Transcript pages 43 - 50).

The Board finds that sufficient evidence was presented to justify the Commission's findings.

II. WAS ANY UNDUE HARDSHIP THAT EXISTS A RESULT OF GALLOWAY'S OWN MAKING, THUS DISQUALIFYING HIM FROM BEING ALLOWED A VARIANCE AS REQUESTED.

The Appellants point to an assertion that undue hardship cannot be self created as grounds for their current appeal, and argue that the applicant, Galloway, purchased the land in 1985, at a time when the existing ordinances were in effect; therefore, he caused his own hardship by purchasing land knowing development would require a variance. Appellants argue that Dawson Enterprises, Inc. v. Blaine County, 98 Idaho 506, 516, 567 P.2d 1257, 1267 (1977) applies to support their position.

In *Dawson*, the applicant owned an option to purchase land zoned for agricultural and residential uses only. Dawson filed a request for a land use change, seeking to have his parcel zoned as commercial for use as an automobile dealership. He then exercised his purchase option, bought the land, and claimed (among other things) that an undue financial hardship would now arise if the zoning change was not allowed.

Dawson presents facts very different from this case. Here, the land was purchased in 1985. Approximately 20 years elapsed before Galloway sought to subdivide the property. Further, Galloway's property has always been zoned for residential purposes, which is the use he seeks to make of his property. Galloway seeks variances for road easements and widths incidental to that allowed use. Dawson, alternatively, bought his property after filing a request for a variance, and knowing full well that the entire use he intended was disallowed, and gambled on obtaining a zoning change, or a variance to allow his use.

Changing the land use for a specific parcel of land to something the entire neighborhood is not zoned for presents a very different question than obtaining a variance for a road easement and width to support an already authorized and allowed use. To change the land use entirely raises the issue of spot zoning, something not at issue here, and which the *Dawson* court spent

significant time discussing. Of note, all cases citing *Dawson* involve spot zoning or requests for variances to change land use entirely, rather than variances for roads incidental to an already authorized land use.

With regard to hardship in the context of spot zoning, the *Dawson* court held as follows:

Moreover, we cannot overlook the fact that Dawson's hardship in this case is self-inflicted since the option to purchase was exercised in full knowledge that the land was zoned residential and that a variance for commercial use had not been granted. As the Supreme Court of Colorado said, under similar circumstances: "*Nopro's land investment was made in full knowledge of the zoning limitations. It took the calculated risk that it could break the zoning use barrier and thereby double the profit from its investment. Having been denied the means by which this might be accomplished, it claims hardship. If hardship exists under the facts of this case and we hold that it does not it was incurred voluntarily by the choice of Nopro and was self-inflicted.*" *Nopro Co. v. Town of Cherry Hills Village*, 180 Colo. 217, 504 P.2d 344, 349 (1973). In *Nopro*, as indicated, the developer was realizing a substantial profit on his investment and was complaining only that it could not make twice as much. *Manger v. City of Chicago*, 121 Ill.App.2d 358, 257 N.E.2d 473 (1970), was closer to the economic facts of this case in that plaintiff had actually put out cash for land that would be worth much less if the zoning variance was not granted. Nonetheless, the Illinois court reached the same conclusion: "*Plaintiffs purchased the two parcels comprising the subject property with full knowledge of its zoning restrictions. While a party who purchases property in the face of the existing zoning classification is not precluded from challenging the validity of the zoning classification, his purchase in the face of the existing zoning classification is one factor to be considered. (Citation omitted.) Plaintiffs admit that they purchased the two parcels comprising the subject property with the intention of endeavoring to secure a change of zoning classification and described their plans as a '*calculated risk*' in paying \$100,000.00 for what they knew to be the then true value of \$15,000.00.*" 257 N.E.2d at 479. Accordingly, the variance was denied. *Dawson Enterprises, Inc. v. Blaine County*, 98 Idaho 506, 516, 567 P.2d 1257, 1267 (1977).

Dawson and those cases cited therein go on to describe that self inflicted hardship, if it exists, is a factor to be considered in whether or not to grant or deny a variance, but is not controlling. Therefore, this Board of Commissioners cannot say that the Planning and Zoning Commission abused its discretion when deciding to grant the variances in spite of the argument of self inflicted hardship and finds in favor of Galloway on this issue.

III. DOES THE BARE LANGUAGE OF THE EASEMENT OBTAINED BY GALLOWAY PROHIBIT HIM FROM SUBDIVIDING?

In the context of planning and zoning, it is not the practice or policy of the Clearwater County Planning and Zoning Commission, or the Board of Commissioners, to become embroiled in disputes between landowners regarding the intent of easements which have been granted. The County looks at the bare language of the easement itself, and if that language appears clear and unambiguous to the County, sufficient to provide a right of access to the proposed subdivision, the County will not delve further into the intent of the parties regarding that easement. The Clearwater County planning and zoning structure is not intended, nor shall be utilized, as a substitute for a court of law to resolve easement disputes between landowners.

Courts recognize this approach when interpreting easements in general:

"In construing an easement in a particular case, the instrument granting the easement is to be interpreted in connection with the intention of the parties, and the circumstances in existence at the time the easement was granted and utilized. Dr. James Cool, D.D.S. v. Mountainview Landowners Co-op. Ass'n, Inc., 139 Idaho 770, 773, 86 P.3d 484, 487 (2004)

The existence of ambiguity determines the standard of review of a lower court's interpretation of a contract or instrument. Union Pac. R.R. Co. v. Ethington Family Trust, 137 Idaho 435, 437-*38, 50 P.3d 450, 452-*53 (2002).

In the absence of ambiguity, the document must be construed in its plain, ordinary and proper sense, according to the meaning derived from the plain wording of the instrument. See Juker v. American Livestock Ins. Co., 102 Idaho 644, 645, 637 P.2d 792, 793 (1981). C & G, Inc. v. Rule, 135 Idaho 763, 765, 25 P.3d 76, 78 (2001)

The easement in question (Appeal Record Section 13) provides a bare, unequivocal grant of non-exclusive easements to Galloway, and Galloway's heirs, successors and assigns, with the only limitation being as follows: "This Grant of Easements is binding upon and enures to the benefit of the heirs, assigns, and successors of the parties hereto, and the easement for ingress and egress shall not be deemed a public right-of-way."

"Public right-of-way" is a term of art, defined in Idaho Code Section 40-117 (9) as a right of way open to the public and under the jurisdiction of the public highway agency, where the agency has no obligation to construct or maintain the same. With the grant of a variance to Galloway allowing the access road to remain a private, rather than a public road, then the easement appears on its face for planning and zoning purposes, to allow for development.

This is not meant nor is to be construed as a finding based upon a disputed hearing as to the intent of the parties to the easement itself, but is to be construed as a finding solely for agency planning and zoning purposes.

Accordingly, the Board of County Commissioners, sitting as an appellate board to review the grant of variances by the Clearwater County Planning and Zoning Commission finds that such grant was not arbitrary, capricious, and was supported by substantial competent evidence, and was not made in violation of law or procedure.

Thus the grant of each of the three variances is UPHELD.

Any stay of proceedings for the pending concurrent subdivision applications is lifted, and the same shall be scheduled for hearing.

DATED this 21st day of November, 2011.



DON EBERT
Chairman

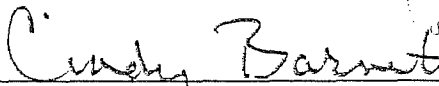


STAN LEACH
Commissioner

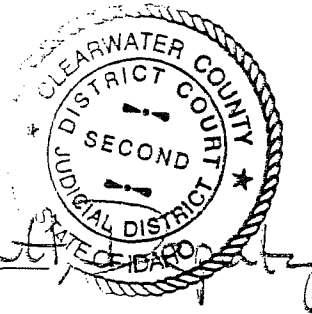
ABSTAINED

CAROLE GALLOWAY

ATTEST:



CARRIE BIRD
Clerk



DEC 08 2011

JONES, BROWER & CALLERY, P. L. L. C.
LAWYERS1304 Idaho Street, P. O. Box 852
Lewiston ID 83501Garry W. Jones
Robert L. Brower*
Thomas W. CalleryTelephone (208) 743-3591
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December 8, 2011

SENT VIA FACSIMILE: (208) 476-8902Clearwater County Commissioners
P. O. Box 586
Orofino, ID 83544

RE: SUB060096

As you are aware, I represent Edward L. and Donilee Shinn. On their behalf, I am filing this written objection to the final approval of the final plat filed by Edward and Carole Galloway on South Fork Estate, the hearing of which is to be held on Monday, December 12, 2011, at 10 a.m. Their grounds for appeal are as follows:

The request fails to comply with the Clearwater County Subdivision ordinance in the following respects:

1. Article IV, Section D of the Clearwater County Subdivision Ordinance provides that it is the responsibility of the subdivision developer to provide an access road from the nearest federal, state, county road or highway to the subdivision site. Subsection (2) of that paragraph provides that the minimum right-of-way standards for such access roads shall be 60-feet. The Galloways' proposed access road is limited to a 30-foot easement over the Shinn's property from the county highway, north to the south line of the proposed subdivision. Specifically, the easement is over and across the westerly 15 feet of the Northwest Quarter of Section 16, and the easterly 15 feet of the Northeast Quarter of Section 17. The access road cannot be dedicated to public use as it is not owned by the Galloways.
2. At that point where the easement enters the Galloway property, the access point would only be 15 feet wide. In order for there to be a full 30 foot easement, the Galloways would also have to have an easement over and across a portion of the

Southeast Quarter of the Southeast Quarter of Section 8 which abuts Galloways property to the west and the remaining portion of the easement to the north.

3. That the easement which the Galloways propose to use for access to the property does not allow that road to be utilized for easement as a public road for ingress and egress. Its use is limited to the Galloways.
4. Further, any grounds of hardship as presented by Mr. Galloway for a variance were of his own making. At the time Mr. Galloway acquired the property which he intends to use for subdivision purposes, there was no sufficient recorded access. Mr. Galloway testified that he purchased the property in 1985. At that time, the present standards for the width of highway were in existence. Subsequently, Mr. Galloway obtained an easement from the predecessors in title to Edward and Donilee Shinn, which easement was only 30 feet wide. Again, this was less than the amount then required by the Clearwater County Subdivision Ordinance. Any hardship that Mr. Galloway may have experienced by virtue of insufficient access to the property is of his own making. Hardship of the applicant's own making cannot be the grounds for the granting of a variance.
5. Planning and Zoning did not follow the provisions of the Clearwater County Subdivision Ordinance in granting variances to the Galloways.
6. The Clearwater County Board of Commission failed to follow their own Subdivision Ordinance in denying the appeal of the Shinn's regarding the granting of variances to the Galloways.

At the present time the Shinn's do not intend to present testimony at the hearing scheduled for Monday, December 12, 2011, at 10:00 a.m. Please accept this letter as their formal objection to approval of the Galloways' final plat. Finally, as we discussed on the phone, please confirm by facsimile that you have received this objection.

Thank you.

Sincerely,

JONES, BROWER & CALLERY, P.L.L.C.



GARRY W. JONES

GWJ/jjg

cc: Edward L. & Donilee E. Shinn
Clayne E. Tyler, Prosecuting Attorney

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PLANNING AND ZONING SIGN IN SHEET

Monday, March 21, 2011

(Please provide all information so we may contact you.)

Print Name	Address	Phone
(Example) John Doe	5555 Nowhere Lane Orofino, ID 83544	208-476-0000
GARRY JONES	1304 IDAHO LEWISTON, ID 83501	208-743-3591
Andy Helkey	1610 Wells Beach Rd Orofino ID	
Glen Strahan	243 Larnadon Dr Kamiah, ID	208-935-7544
Jerry Strahan	3240 Hwy 64 Kamiah ID	208-935-1829
Baker Binyon	4760 Alpen Lane Lenore	208-476-7615
Randy Barry	224 B st Orofino	208 476-4378
Garth Mack	716 Three Bear Kendrick	208 289 4891
Chris Marvin	522 Brown Ave Orofino	208 476-7546
Thomson Marvin	6637 Cougar Rd Lewiston	208 743 5458
Don Shuler	3592 FREEMAN CR	208-746-4120
Tom Mack	716 Three Bear Rd Kendrick	208 289 4891
Glynn Jones	711 Osprey Ln Lenore	208 476 3674
Garth Galloway	524 Galloway Dr. Lenore	208 476-7118
Ed Galloway	" " " " "	" " " " "
Doreen & Shinn	6710 Sampson Rd Trenchard	509 8542429
Ed Shinn	" " " " "	" " " " "
Brent Ruhl	350-115 Stv Orofino ID	476-9093

(Please provide all information so we may contact you.)

Phone

208-476-0000

34425 WADSWORTH CENTER

PLANNING AND ZONING SIGN IN SHEET

Monday, August 15, 2011

(Please provide all information so we may contact you.)

Print Name	Address	Phone
(Example) John Doe	5555 Nowhere Lane Orofino, ID 83544	208-476-0000
ED GALLOWAY	Freeman Creek	476 7110
GARRY JONES	1304 IDAHO ST. LEWISTON	743-3591
Don Fagge	3592 Freeman CK	476-4120
Roger Singleton	446 Aspen Lane	476-7615
Dan Jones	531 Warner Lewiston	791-5039
Chris Marcin	6633 Lewisto Id	743-5958
Chris Marcin	522 Brown Ave Orofino	476-7546
Ed Shinn	671 Sampson Rd Tappan, WA	509-8542429
Douglas Shinn	" " "	509 8542429

October 3, 2011
Please Sign In

Name	Address	Representative
James H. J. J. J.		Weed Control
Barrie Bird		Auditor
Lauri Stefanick		Social Services
Chris Goetz		SD
Mike Gladhart		SD
Donna Shinn		
Ed Shinn		
Bob Kaufman		B & P
Dawn Elenore		Treasurer
Bob Simon		Road & Bridge
Angela Vander Poo		IT
Mark McMillan		
Bob Gyle		
Paul Gyle	P.O. Box 362, Nezperce	Unbrail box
Red Gyle		
C. Tyler		

GALLOWAY'S VARIANCE (SUBDIVISION ORDINANCE) (INTRODUCTION FOR MAR 21ST P&Z MTG)

(ZV2011-2): "The hearing for agenda item number ZV2011-2, a request for a Variance by Edward and Carole Galloway is now open. Are the applicants present? ***(Pause--if present proceed.)*** With regard to a follow-on hearing for the full-plat stage of a Class B Subdivision named Southfork Estates, this request is to use the Variance provision from the Clearwater County Subdivision Ordinance to modify the standards for the access road by asking: (1) for a reduction in the minimum right-of-way width standard from 60 feet to 30 feet except for 15 feet at the property line; (2) for a reduction in the surfaced or finished width from 24 feet to 18 feet except for 15 feet at the property line; and (3) to set aside the requirement to dedicate the access road to public use. Article IV, Sections B and D establish the minimum standards for access roads. Article VIII of the subdivision ordinance establishes the circumstances and procedures for granting a variance. The property is zoned F-1 which is the "Low Density Rural District." The property is located in Section 9, Township 37 North, and Range 1 East in the Freeman Creek area with access to Middle Road, Clearwater County, Idaho. The property is not within an area-of-city-impact. The Commission may, by majority vote, grant, conditionally grant, deny, or postpone a decision until a new public hearing shall be called on the application."

9:13 am → 5 yes
2 no

REMAND: GALLOWAY'S VARIANCE (SUBDIVISION ORDINANCE) (INTRODUCTION FOR AUG 15TH P&Z MTG)

(REMAND: ZV2011-2): “The hearing for the remand of agenda item number ZV2011-2, a request for a Variance by Edward and Carole Galloway is now open. Are the applicants present? ***(Pause--if present proceed.)*** With regard to Subdivision Request SUB060096, this request was to use the Variance provision from the Clearwater County Subdivision Ordinance to modify the standards for the access road to the subdivision by asking: (1) for a reduction in the minimum right-of-way width standard from 60 feet to 30 feet except for 15 feet at the property line; (2) for a reduction in the surfaced or finished width from 24 feet to 18 feet except for 15 feet at the property line; and (3) to set aside the requirement to dedicate the access road to public use. The Commission granted all three variances; however, an interested party and adjacent land-owners Edward L. and Donilee E. Shinn appealed this decision to the Clearwater County Board of County Commissioners. Per the appeal, the Board ordered each of the grants of variance remanded to the Commission to receive additional evidence and conduct additional fact finding by virtue of an additional public hearing. The purpose of this hearing is to determine whether or not the element of undue hardship exists, and to reevaluate the consideration of “undue hardship” in light of the remaining items to be found before a variance can be granted. The Commission may, by majority vote, regrant, conditionally grant, deny, or postpone a decision until a new public hearing shall be called on the application.”



CLEARWATER COUNTY BUILDING & PLANNING
 150 Michigan Ave. • PO Box 586 • Orofino, ID 83544
 (208) 476-4815 • Fax (208) 476-8994 • bp@clearwatercounty.org

OPENING CEREMONIES

The Clearwater County Planning and Zoning Commission met on **Monday, March 21, 2011**, in Courtroom 1 of the Clearwater County Courthouse. A quorum being present, Chairman Trelawny Bruce called the meeting to order at **6:30 p.m.** followed by the Pledge of Allegiance.

Ms. Administrator briefed everyone on the Emergency Exit Procedures.

The following commission members were present: Chairman Trelawny Bruce, Vice Chairman Charlie Nation, Steve Eikum, Mike Riccomini, Lee Woolsey, Josh Steiner, Deryl Ketchum, and Cory Brown

No commission members were absent.

The following ex-officio members were present: Andy Helkey, Environmental Health Specialist of the North Central District Health Department, Bobbi Kaufman, Clearwater County Building and Planning Administrator, and Rob Simon, Clearwater County Road and Bridge Department Supervisor

The agenda is approved as changed. Minutes are approved as corrected. Chairman Bruce explains the hearing procedures.

PUBLIC HEARING

6:43 p.m.

(ZV2011-2) A Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

- **Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;**
- **Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and**
- **Set aside the requirement to dedicate the access road to public use as required by § B.**

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

Chairman Bruce opened the public hearing and asked the applicants to present themselves. MR. EDWARD AND MRS. CAROLE GALLOWAY [524 GALLOWAY DR., LENORE, ID 83541-5107] were present.

Ms. Administrator: "I move that the commission approve ZV2011-2, a variance request by Ed and Carole Galloway." Mr. Riccomini seconded

No additions to findings. Staff findings are presented on the easel. Ms. Administrator read from the Clearwater County Subdivision Ordinance under Article VIII the purpose of a variance: The Commission may grant a variance from the provisions of this ordinance on a finding that undue hardship results from the strict compliance with specific provisions of requirements of this ordinance or that the application of such requirements or provision is impracticable.

Testimony by applicant:

MR. EDWARD GALLOWAY [524 GALLOWAY DR., LENORE, ID 83541-5107] explains he and his wife Carol Galloway have owned this piece of property for 30 years. This piece of property was subdivided at an earlier time and was passed with no reference to the exterior roads. At that time the Planning and Zoning administrator did not address the exterior roads. They did however have a variance for the interior roads. They did reduce the interior roads from 24 feet to 18 feet. When this was first submitted, Mr. Galloway submitted two plats. The one being discussed at this time is The Hidden Valley Subdivision (now called South Fork Estates) it has a 2000 foot exterior road from the county road, while the other subdivision had a 4000 foot access road from the county road. Both were approved at that time. Don and Harold Johnson did provide an easement through their properties to the Galloway's property on Middle Road. There is also a prescriptive easement that dates back to the 1800's on that road, Mr. Galloway is not sure if it is still active. He then discussed the variance the county was suggesting for this plat. He mentioned that there is a bottleneck going into the subdivision that would reduce the access. Afterwards, he went on to introduce the Comp Plan and a few Ordinances that he believed supported his plan for subdividing. Also, he discussed how this would be a beneficial endeavor for the county to allow. Throughout the discussion the Commission would ask for clarifications on the specifications of the access road as well as the interior roads of the subdivision and how much of Middle Road does the county maintain. The Commission had concerns on the impact this subdivision would have on adjacent land owners.

No supporting testimony was provided.

Opposing testimony:

GARY JONES [1304 IDAHO ST., LEWISTON, ID 83501] was representing Mr. and Mrs. Shinn who are opposed to Mr. Galloway's proposal. He discussed the possibility that Middle Road ended before Mr. Galloway's subdivision access. If Middle Road ended approximately past the Brown Rd and Middle Rd Intersection then there is no road maintenance agreement for the portion of road prior to Mr. Galloway's subdivision. He explained the easement for the land owners was a reciprocal easement, an agreement by his understanding to be used for the Galloway's and their family, not ten more families. He defined his understanding of the easement that was granted to the Galloway's and their heirs, where the ingress and egress shall not be deemed as a public access road.

DON INGLE [3592 FREEMAN CREEK RD, LENORE, ID 83541] introduced his concerns with the access road as well as the sewage system in the subdivision.

ROGER KINYON [476 ASPEN LN, LENORE, ID 83541] discussed the road into the Elk Meadow's subdivision in relationship to Mr. Galloway's access road into South Fork Estates. Mr. Kinyon maintains the Elk Meadow's road yearly; he explained the road goes from 60 feet to 24 feet in some areas. It is hard to maintain and does not feel that a 15 foot surface is a wide enough road to have adequate snow removal or give Emergency Response vehicles adequate room, if they were meeting on the roadway. The Commission asked for comparison between the two subdivisions.

CHRIS MARVIN [522 BROWN AVE, OROFINO, ID 83544] explained he had lived in this area for many years, and did not agree that Mr. Galloway could remove the snow without having to use the neighbor's property. He discussed the winter conditions and how hard it is to keep the road open through the winter.

Written correspondence: Letter dated February 11, 2011, from Sam Charles, Ponderosa Area Manager Idaho Department of Lands. Based on the documentation provided to IDL, the development will not impact Sate Trust Lands at this time.

Non-Committal testimony:

TERRY GOLDING [PO BOX 1818, LEWISTON, ID 83501] reviews the Middle Road petitions and to his knowledge the JA Holliday petition from 1911 continues Middle Road from the intersection of Brown Road northerly to the Freeman Creek Road.

Ex-Officio member Rob Simon, Clearwater County Road and Bridge Supervisor, reiterated what Mr. Golding was presenting. The JA Holliday petition was recorded in 1911 even though it may have never been built. The Crow Petition recorded 1910 also extends Middle Road from the intersection of Brown Road North Easterly through Sections 09, 10, 15, 16 of Township 37N Range 01E. The Commission discussed the Middle Road petitions and if they were dedicated to the public. Mr. Simon also explained how the county removes the snow on county roads, and the snow is winged around 30 feet off the roadway.

Mr. Golding explained his interpretation of the exclusive and non-exclusive meaning relating to an easement. The Commission asked Mr. Golding to clarify his understanding on the definition of the easement that was given to Mr. Galloway.

JERRY STRAHAN [3240 HWY 64, KAMIAH, ID 83536] explained how in his opinion the easement that was given to Mr. Galloway was a non-exclusive easement that has no limitations.

Rebuttal Testimony:

Mr. Galloway discussed easements and read into the record a past correspondence written from the Shinn's. Also, he introduced a letter that Clayne Tyler had written to the Board of County Commissioners, Ms. Administrator, and Chairman Bruce. This letter addressed the difference between a public and private road. Then he did a comparison between his proposed subdivision and the Elk Meadows Subdivision. He agreed with Mr. Kinyon that it may be difficult to maintain the roads; however, he felt that the access road does meet all the requirements to move forward.

Debate and Discussion:

Ms. Administrator then explained that the application is being judged under the subdivision ordinance and then proceeded to read the variance standards from the ordinance into the record.

Rob Simon did confirm that Middle Road is a County road; however, it is only maintained to Brock's property. Brock's property is approximately one mile past the Browns Road intersection. He also discussed that Middle Road is an all-weather road, which does have a weight restriction as the majority of all county roads have.

Next, the Commission deliberated if the Middle Road was in fact a maintained county road. They also conferred over Mr. Galloway's access road into his subdivision, whether it had adequate room for emergency vehicles or if the bottleneck would create any hazards to the public.

Mr. Eikum was against passing the variance due to it not meeting what he believed were the standards for exterior roads in a subdivision in the ordinance. Mr. Woolsey also was against allowing a variance because he didn't feel that they should be required to dedicate the access roads for public use.

The Commission then discussed that Mr. Galloway could have split the property into 20 acre lots and would not have had to go through the Planning & Zoning process at all; however, instead he chose to do a full platted subdivision which requires specific standards that he will have to meet before it will be approved.

There being no further discussion among the Commission, Chairman Bruce put the main motion to a vote. The motion carried with 5 Ayes and 2 Nays, in which the Ayes have the majority vote.

Mr. Bruce explains follow-on actions and the process for appeals.

9:24 p.m.

(SUB060096) Final plat stage of the full platting procedure for Hidden Valley Subdivision re-named South Fork Estates, a Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots: Lot 1) 13.14 acres, Lot 2) 9.23 acres, Lot 3) 9.81 acres, Lot 4) 10.09 acres, Lot 5) 10.33 acres, Lot 6) 11.28 acres, Lot 7) 9.84 acres, Lot 8) 6.67 acres, Lot 9) 8.98 acres, Lot 10) 13.08 acres. This is a continuation of the 17 November 2008 public hearing. This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

Chairman Bruce opened the public hearing and asked the applicants to present themselves. MR. EDWARD AND MRS. CAROLE GALLOWAY [524 GALLOWAY DR., LENORE, ID 83541-5107] were present.

Ms. Administrator: "I move that the commission recommend approval for SUB060096, a Class B Subdivision (South Fork Estates) request by Ed and Carole Galloway." Mr. Brown seconded

Additions to findings: Variance request ZV2011-2 was approved at the March 21, 2011, Planning and Zoning Hearing.

The Clearwater County Rural Addressing Department approved the access roads to be named Summer Range Drive and Wild Rose Court.

Staff findings are presented on the easel.

Testimony by applicant:

MR. GALLOWAY [524 GALLOWAY DRY, LENORE, ID 83541] explained that the subdivision that he was proposing does not vary from the preliminary plat. Also, that the roads will not be constructed to the Local Highway Technical Assistance Council (LTAC) standards and for it pre-dates the county adopting the LTAC standards. However, Mr. Galloway is willing to build an all season road.

The Commission then addressed Mr. Simon and asked how he will certify when the roads are finished. Mr. Simon replied that the roads will be finished when he (himself) signs the final plat Mylar.

Mr. Ketchum followed with the question of whether or not the county had in fact already adopted the LTAC Standards. Mr. Simons replied that "yes" the county has adopted the LTAC Standards.

No supporting testimony.

Opposing testimony:

GARY JONES [1304 IDAHO ST., LEWISTON, ID 83501] would respectfully like the decision to be tabled until there is time to appeal the variance hearing.

Ms. Administrator explains that both hearings will have their appeals rights regardless and this concern has been noted. Clayne Tyler, Clearwater County Prosecuting Attorney and legal advisor, directed her on this appeal procedure.

Written correspondence: Letter dated February 11, 2011, from Sam Charles, Ponderosa Area Manager Idaho Department of Lands. Based on the documentation provided to IDL, the development will not impact Sate Trust Lands at this time.

No other testimony.

Debate and Discussion:

The Commission inquired to Mr. Helkey if the test holes had been completed, in which he replied that they had been tested in 2008 and they were a suitable size.

Next they asked Mr. Simons if he had looked at the roads as of yet, in which he replied not as of yet and would like to withhold any comments.

There being no further discussion among the Commission, Chairman Bruce put the main motion to a vote. The motion carried unanimously.

9:48 p.m.

(SD2011-2) A Class S Subdivision Simple Subdivision request by Gayle Marek to divide 22.21 acres into 2 lots. Lot A 10.74 acres, Lot B 11.47 acres. This property is in Section 02, Township 35 North, Range 01 West, located along Daisey Rd, Kendrick, ID-Clearwater County; Zoned Low Density Rural District F-1.

Chairman Bruce opened the public hearing and asked the applicant to present themselves. MR. TOM & MRS. GAYLE MAREK [716 THREE BEAR RD, KENDRICK, ID 83537] were present. MR. GLEN STRAHAN [243 LARRDON DR, KAMIAH, ID 83536] represented the application.

Ms. Administrator: "I move that the commission recommend approval for SD2011-2, a Class S Subdivision request by Tom & Gayle Marek." Mr. Woolsey seconded

Additions to findings: Email received March 21, 2011, from Andy Helkey, Environmental Health Specialist of Public Health Idaho North Central District of Speculative Site Evaluation for Gayle Marek. Evaluation comments: Lot A-#1 unsuitable due to lack of soil depth. Lot A#2, approximate 250 yards north of Daisy Rd on lower bench suitable soil depth and type for individual on site system. Lot B#3, hole 50 yards northwest of access road suitable soil depth and type.

Staff findings are presented on the easel.

Testimony by applicant:

GLEN STRAHAN [243 LARRDON DR, KAMIAH, ID 83536] explained that the Marek's would like to divide 22 acres into two parcels. These parcels will have the Covenant's, Codes and Restrictions applied to them, which restricts any property buyer from reducing the acreage to smaller lots. The property being discussed does have a site evaluation and is flat ground with nice building sites. Next he discussed the road and approach on Jeter Candler Rd, and how the Marek's are willing to donate land to the county to make the approach wider.

The Commission then inquired about the access to the properties located behind these two proposed pieces. Mr. Strahan stated that three lots accessed from 6B and both the lots proposed today access from Daisy Road.

Supporting testimony:

ED GALLOWAY [524 GALLOWAY DR., LENORE, ID 83541] stated that he had already dug the test holes and they tested well. He also wanted to add that these are beautiful building sites.

No opposing testimony.

Written correspondence: Letter dated March 15, 2011, from Sam Charles, Ponderosa Area Manager Idaho Department of Lands. Based on the documentation provided to IDL, the development will not impact State Trust Lands at this time.

Non-Committal Testimony:

TERRY GOLDING [PO BOX 1818, LEWISTON, ID 83501] found a clerical error in the Marek's property description in the hearing packets provided to each member. The Section and Township should say Sec 35, T38 N, not Sec 02, T37N. This change will be updated in the written decision/finding of facts to the Board of County Commissioners for their final decision.

Debate and Discussion:

The Commission inquired whether Mr. Helkey had already done a site evaluation. Mr. Helkey replied that he had and everything passed.

There being no further discussion among the Commission, Chairman Bruce put the main motion to a vote. The motion carried unanimously.

10:03 p.m.

(CU2011-1) A Conditional Use request by Sacarias and Lilia Guitron, owners of Fiesta En Jalisco, to allow the establishment of an 8' x 8' billboard near Triple T Storage along Highway 12. This property is in Section 33, Township 37 North, Range 01 East, located at 39432 Hwy 12, Orofino, ID-Clearwater County; Zoned Light Industrial District M-1.

Chairman Bruce opened the public hearing and asked the applicant to present themselves. MR. RANDY BARRAZ [224 B ST., OROFINO, ID 83544] was representing.

Ms. Administrator: "I move that the commission recommend approval for CU2011-1, a Conditional Use request by Sacarias and Lilia Guitron, owner of Fiesta En Jalisco." Mr. Riccomini seconded

Additions to findings: From their March 15, 2011, meeting: The City of Orofino Planning and Zoning Committee would like to thank you for the opportunity to review and comment on the conditional use permit from Mr. and Mrs. Guitron. The committee has reviewed the application and has found no conflict with the City of Orofino's sign ordinance and suggests the County P&Z Committee follow staff's recommendation.

Staff findings are presented on the easel.

Testimony by applicant:

RANDY BARRAZ [224 B ST., OROFINO, ID 83544] requested for his brother-in-law to be able to put up a sign at the TTT Storage site coming into Orofino from the west.

The Commission asked for the exact location of where the sign would be placed, in which Mr. Barraz stated behind a piece of equipment (cat and grader) on the hillside.

No supporting testimony, no opposing testimony.

Written correspondence: Letter dated March 15, 2011, from Robert McKnight Clearwater Area Manager Idaho Department of Lands. Based on the documentation provided to IDL, the development will not impact State Trust Lands at this time.

No other testimony.

Debate and Discussion:

The Commission discussed the State standards for sizes of signs that are allowed along state highways.

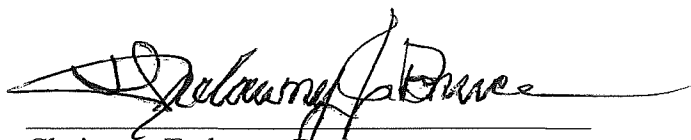
There being no further discussion among the Commission, Chairman Bruce put the main motion to a vote. The motion carried unanimously.

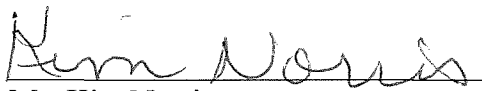
ADJOURNMENT

The meeting was adjourned at 10:17 p.m.

Respectfully submitted,

Approved: _____


Chairman Trelawny Bruce


Ms. Kim Norris
Acting Recording Secretary

5/2/11

Date Signed



CLEARWATER COUNTY BUILDING & PLANNING
 150 Michigan Ave. • PO Box 586 • Orofino, ID 83544
 (208) 476-4815 • Fax (208) 476-8994 • bp@clearwatercounty.org

OPENING CEREMONIES

The Clearwater County Planning and Zoning Commission met on **Monday, August 15, 2011**, in Courtroom 1 of the Clearwater County Courthouse. A quorum being present, Chairman Trelawny Bruce called the meeting to order at **6:30 p.m.** followed by the Pledge of Allegiance.

Ms. Administrator briefed everyone on the Emergency Exit Procedures.

The following commission members were present: Chairman Trelawny Bruce, Vice Chairman Charlie Nation, Mike Riccomini, Lee Woolsey, Josh Steiner, Cory Brown, and Deryl Ketchum

The following commission members were absent:

The following ex-officio member was present: Bobbi Kaufman, Clearwater County Building and Planning Administrator

Ms. Administrator advises of the correction to the agenda that a report of what became of this meeting will be given to the Board of County Commissioners on Monday, August 22, 2011, at 11:00 A.M. The agenda has been approved as changed. Chairman Bruce advises of a spelling correction on the last page of the minutes. Minutes are approved as corrected. Chairman Bruce explains the hearing procedures.

Mr. Woolsey asks if the question they are dealing with is going to revolve around undo hardship. Chairman Bruce affirms.

Mr. Smith asks that the members raise their hands and be identified. Chairman Bruce explains the previous hearing and advises the members to raise their hands and be identified.

PUBLIC HEARING

6:35 p.m.

(ZV2011-2) A Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval and final approval is pending following this hearing. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;

Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and

Set aside the requirement to dedicate the access road to public use as required by § B. 192

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

Definitions displayed for the Commission's review. Chairman Bruce opened the public hearing and asked the applicants to present themselves. MR. EDWARD AND CAROLE GALLOWAY [524 GALLOWAY DR, LENORE, ID 83541] were present. Chairman Bruce states that the Commission granted the three variances; however, Edward L. and Donilee E. Shinn appealed the decision to the Clearwater County Board of County Commissioners. Per the appeal, the Board ordered each of the grants of variance remanded to the Commission to receive additional evidence and conduct additional fact finding by virtue of an additional public hearing. The purposes of this hearing are to determine whether or not the element of undue hardship exists and to re-evaluate the consideration of undue hardship in light of the remaining items to be found before a variance can be granted. Chairman Bruce further advises that the Board of County Commissioners gave additional guidance and reads the guidance to the Commission.

Ms. Administrator: "I move that the commission approve ZV2011-2, a variance request by Ed and Carole Galloway." Mr. Riccomini seconds the motion.

Ms. Administrator presents additional staff findings and reads letter submitted by Mr. Galloway dated August 10, 2011, as part of his testimony. Ms. Administrator points out a few key items in the staff report which is presented on the easel.

Testimony by applicant:

EDWARD GALLOWAY (FREEMAN CREEK, LENORE, IDAHO) advises he has no testimony to present as his letter to Ms. Administrator covers the facts and he is open to questions.

Chairman Bruce advises that in Mr. Galloway's letter, he uses the word 'impossible.' Chairman Bruce asks Mr. Galloway to clarify this. Mr. Galloway advises he has a 30 foot easement and any neighbor who takes him to Court is not going to give him another 30 feet, so he would find it impossible. Chairman Bruce asks Mr. Galloway if he has purposed that he buy additional property from that neighbor in order to meet the easement requirements. Mr. Galloway advises he did not.

Mr. Woolsey asks Mr. Galloway, if the variances are not granted, what would become of his property. Mr. Galloway advises he has no idea. Mr. Woolsey asks Mr. Galloway if he would not be able to develop the land. Mr. Galloway advises that is true.

Mr. Smith asks Mr. Galloway what the width of Middle Road was when it was originally platted. Mr. Galloway advises that as far as he can tell it was 50 feet wide.

Mr. Nation asks Mr. Galloway which neighbor would not give him an easement. Mr. Galloway advises it would be Ed Shinn and his wife.

No supporting testimony.

Opposing testimonies:

DON INGLE [3592 FREEMAN CREEK ROAD, LENORE, ID 83541] advises he has approached Mr. Galloway, trying to come up with a reasonable price to buy the property, but Mr. Galloway has refused to sell it to him. Mr. Engle advises his major concern is fire access and EMS services to this subdivision with limited roads, particularly in the winter. Chairman Bruce advises Mr. Engle that what the

Commission is trying to determine is whether or not there is undue hardship for Mr. Galloway. Mr. Riccomini asks Mr. Engle what property he is trying to buy from Mr. Galloway. Mr. Engle advises he wants to buy the whole subdivision. Mr. Riccomini asks Mr. Engle if he is looking for some type of a price everybody would be happy with. Mr. Engle responds.

ROGER KINYON [476 ASPEN LANE, LENORE, ID 83541] advises he has the 250 acres behind this property and asks if the variance, when he develops his 250 acres, carries over to his property. Chairman Bruce advises Mr. Kinyon that the Commission's concern is proving whether or not there is undue hardship for the Galloways.. Mr. Woolsey advises the plat map shows no continuing roads, they both terminate in cul-de-sacs. Mr. Riccomini asks which property he owns. Mr. Kinyon responds. Ms. Administrator advises Mr. Kinyon that the standards in the ordinances apply to everybody.

GARY JONES [1304 IDAHO STREET, LEWISTON, ID 83501] advises he is an attorney representing Ed and Donilee Shinn. Mr. Jones advises the Commission that there are really only 2 issues that are being decided, the 60 foot to a 30 foot and the 24 foot to the 18 foot. Mr. Jones advises that the third issue has been determined sufficiently.

Mr. Jones advises that Clearwater County has a subdivision ordinance and if it is outdated, it needs to be changed. Mr. Jones asks that 9 pictures be introduced as exhibits for the record. Mr. Jones advises 1, 2 and 3 shows east of the proposed roadway and 4 shows the property as it leaves Middle Road. Mr. Ketchum asks that Mr. Jones identify the pictures by the number. Chairman Bruce asks Mr. Jones if he can tie it in to undue hardship. Mr. Jones responds. Mr. Woolsey asks Mr. Jones to clarify as it was his understanding that his question was, "that's why it was suitable to have a narrower road base." Mr. Jones responds. Mr. Woolsey asks if it is a hardship if a person only has 30 feet to put it in. Mr. Jones responds. Mr. Riccomini asks Mr. Jones if he has a picture of the gate. Mr. Jones advises he does not have a close up. Mr. Nation asks Mr. Jones what 5, 6, 7, 8 and 9 are pictures of. Mr. Jones advises 5 is going towards Mr. Galloway's property, and 6, 7, and 8 are looking in the other direction from Mr. Galloway's property back up the road towards Middle Road. Mr. Jones further advises that 9 is looking back towards the road. Mr. Jones informs the Commission the topography is fairly level.

Mr. Jones advises that Mr. Galloway lists 2 reasons for hardship. One being the ordinance is outdated and the second being costs. Mr. Woolsey asks Mr. Jones if the Shinn's would sell Mr. Galloway more right-of-way. Mr. Jones advises the Commission, "probably not." Mr. Woolsey asks Mr. Jones if on a limited easement if the conditional use or the use of that be defined in the easement when it was granted. Mr. Jones responds.

Mr. Jones advises the Commission that they have to find what the areas of hardship are. Mr. Nation asks Mr. Jones if it is not true that the Shinn's simply do not want Mr. Galloway to develop at all. Mr. Jones responds. Mr. Ketchum asks the Commission how long ago did the Board grant permission for this subdivision. Chairman Bruce advises it has not gone through the final plat stage at the Board of County Commissioners' level. Ms. Administrator advises the plat will not go through the final hearing until the variance issue is resolved.

Written correspondence:

Letter dated February 11, 2011, from Sam Charles, Ponderosa Area Manager Idaho Department of Lands. Based on the documentation provided to IDL, the development will not impact Sate Trust Lands at this time. Ms. Administrator further advises the letter was submitted back in March when the application was heard the first time, but IDL wanted to resubmit it.

No other testimony.

Rebuttal by applicant:

Mr. Galloway asks to see the pictures that were presented. Mr. Galloway addresses the Commission regarding the 1979 subdivision ordinances. Mr. Galloway advises the Commission he has 13 hardships. Mr. Galloway requests the Commission to pass the variances and send it back to the Board of County Commissioners.

Hearing is closed to public comments.

Debate and Discussion by the Commission:

Chairman Bruce questions Mr. Jones about testimony from Mr. Ingle stating the road has deep cuts, but the pictures show the land is easy, sloping, rolling and flat. Mr. Jones advises that there would be deep cuts as far as the snow is concerned, but as far as the construction is concerned it is pretty level.

Mr. Ketchum comments that (the problem) is a 30 foot easement to a piece of property that has been platted and approved by this Commission. Chairman Bruce advises that the Commission approved the preliminary plat, but cannot approve the final plat. Mr. Ketchum further comments that it is highly unlikely that there is going to be a 60 foot easement in order to build an adequate road, so Mr. Galloway is stuck with a 30 foot easement and Rob Simon says an 18 foot road (driving surface) would fit. Mr. Ketchum advises the hardship is that there is no way to accomplish the things that are required by the ordinance.

Mr. Smith comments on the fire code brought up by Mr. Ingle. The fire code does say 20 foot width (driving surface). Mr. Smith advises that he is unsure if the State Fire Marshall allows that width to be reduced by a local fire official or by another mechanism. Mr. Woolsey advises that he does not believe the Commissioners have adopted that in any of the ordinances, so he does not know that it is pertinent. Mr. Smith advises that the County has not adopted the fire code; however in lack of a county fire code, it does fall to the State Fire Marshall. Mr. Woolsey advises there are roads in Clearwater County that are not 20 feet wide. Ms. Administrator advises that the ordinance and the variance that they are deemed under: the Commission is not under the fire code. Mr. Ketchum comments on fire codes. Mr. Smith states a question, "Does the State Fire Marshall have the authority to regulate the width of the road in our lack of having a fire code?" Ms. Administrator advises that she does have a copy of the International Fire Code of 2006 in her office. Mr. Riccomini comments that this has been done on other variances and in other parts of the county. Chairman Bruce advises that the Commission has to analysis each application on its own merit.

Chairman Bruce comments that the Shinn's will not sell property to Mr. Galloway so that he can achieve the standard, a 60 foot easement, then he is confronted with a hardship. Mr. Nation advises that it is his opinion also and Mr. Galloway's solution would be to go to 20 acre or larger lots. Mr. Nation further advises that he is convinced that Mr. Galloway is trying to comply with the intent of the ordinance as far as regulating the growth of development, but does need the variance in order to proceed with that type of development. Mr. Nation advises that the Commission has taken each application on its own (merit) and applied variances in one situation or another. Chairman Bruce states that is the tool that the ordinance provides, but questions, "Is the Commission violating a State law with the width 18 instead of 20?" Mr. Ketchum advises the International Fire Code recommends 20 foot minimal width, but it can be varied. Ms. Administrator asks Mr. Smith if he is referring to the ordinance that such variance would not violate the provisions of the Idaho Code. Ms. Administrator states that if Mr. Ketchum is saying that within the fire code it allows variances, then they are not breaking State law. Mr. Smith responds. Ms.

Administrator advises she sent the agenda to all of the public subdivisions, which includes the fire chiefs, and if Mr. Howard Weeks from the Evergreen Fire District had concerns of violations, would he not have submitted a concern?

No further comments from Mr. Nation, Mr. Riccomini, or Mr. Smith. Mr. Woolsey advises that it is his impression that the Board was seeking to have additional facts added into the record. Mr. Woolsey feels that there are some hardships that the property owner has no control over and would classify it as undue hardships. Mr. Woolsey advises that there is not an opportunity for the applicant to get additional easement to meet the letter of the code, through his best efforts or not. Therefore, the Commission is imposing a hardship on him to require something that Mr. Simon said would be an adequate road to serve homes in that area. Mr. Woolsey is inclined to approve it with the additional findings and send it back to the Board of County Commissioners for their final judgment.

Mr. Smith comments that it is not reasonable to have a 24 foot wide (road) bed on a 30 foot wide easement. Chairman Bruce advises that there is no practical way for Mr. Galloway to increase that easement. Mr. Smith states there is no opportunity to expand the easement. Chairman Bruce asks if Mr. Smith agrees that that would be an undue hardship. Mr. Smith does not agree it is an undue hardship. Chairman Bruce asks Mr. Galloway when he purchased the property. Mr. Galloway advised he purchased the property in 1985.

Mr. Riccomini concurs with Mr. Woolsey that because he only has a 30 foot easement and he cannot obtain a greater easement than that to build a road, then that is an undue hardship. Mr. Nation has already made his opinion. Mr. Ketchum advises that that is his point of view. Mr. Brown agrees. Mr. Steiner agrees.

Chairman Bruce asks Ms. Administrator, "From the standpoint of other undue hardship factors, what the Commission has to establish for what the Board of County Commissioners want?" Ms. Administrator states that, "Are those special circumstances such that failure to grant the variance would cause undue hardship to the developer?" Ms. Administrator advises that Mr. Galloway cannot develop his property into those lots and that could be deemed an undue hardship. Ms. Administrator states that, "Would strict compliance with the requirement of this ordinance result in inhibiting the achievement of the objectives of the ordinance or nullify the purpose of the ordinance or the Comprehensive Plan?" Ms. Administrator comments that there are points in the Comprehensive Plan that state that, we would like to keep the rural-ness of the county." Ms. Administrator advises that Rob Simon states that it is not an unsafe road.

Chairman Bruce reads from the Comprehensive Plan. As far as general planning goals, the Commission has to provide for protection of private property rights and need to preserve the rural nature of development that has historically occurred in Clearwater County.

Mr. Ketchum asks Chairman Bruce if the Commission talked about public/private road. Chairman Bruce advises Mr. Ketchum that it is not a factor.

There being no further debate or discussion among the Commission, Chairman Bruce puts the motion to a vote. The question is, "shall the Commission reapprove ZV2011-2, a variance request by Ed and Carole Galloway?" The motion is carried unanimously.

Ms. Administrator advises that all the stipulations as guidance that the Board of County Commissioners requested the Commission to consider has been done, along with the testimony provided and the applicant's written correspondence.

Chairman Bruce thanks everyone for participating in this hearing. Chairman Bruce advises that the instructions on how to appeal are on Page 42 in the Subdivision Ordinance.

NEW & PENDING BUSINESS


None

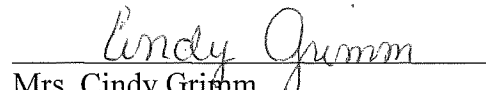
ADJOURNMENT


The meeting was adjourned at 8:19 p.m.

Respectfully submitted,

Approved: _____


Chairman Trelawny Bruce


Mrs. Cindy Grimm
Acting Recording Secretary


Date Signed

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PLANNING AND ZONING HEARING

CLEARWATER COUNTY

MARCH 21, 2001

6:30 PM

ZV2001-2 and SUB060096

TRANSCRIBED BY: KEITH M. EVANS, RPR, CSR NO. 655

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kkreport@wildblue.net

1 (Thereupon the following oral proceedings
2 were had as follows, to-wit:)

3 CHAIRMAN BRUCE: Good evening. A quorum being
4 present the meeting will come to order. Please stand
5 and join me in the pledge to our Nation's flag.

6 I pledge allegiance to the flag of the United
7 States of America, and to the republic for which it
8 stands, one nation, under God, indivisible with liberty
9 and justice for all. You may be seated. Ms. Kaufman,
10 would you brief us on our emergency procedures
11 response.

12 MS. KAUFMAN: We are right here in this room.
13 All of the exits are marked in green for the out --
14 going out of the courtroom, and all exits have an exit
15 sign. We are here. If there was to happen to be an
16 emergency we can either go out this door or this door,
17 depending. The rules say to help all those in danger,
18 evacuate all persons, including checking the restrooms,
19 unlock and close doors, go to the nearest exit and meet
20 outside the building grass area behind Wells Fargo, and
21 don't go back until it's safe. So hopefully we don't
22 have to do that, but just a quick overview. These are
23 the stairs that go out in front of the courthouse, or
24 these come back behind by the county commissioners
25 office out towards the parking lot.

1 CHAIRMAN BRUCE: Thank you, Ms. Kaufman. Next I
2 would like to introduce the people that are part of our
3 planning and zoning commission. Start with
4 Ms. Kaufman, she's our planning and zoning
5 administrator. She's also an ex-officio member of this
6 commission, and Ms. Norris is our recording secretary.
7 We also have a couple of other ex-officio members:
8 Mr. Simon, he's the Clearwater County Bridge Road
9 Department Chief, and Mr. Helkey is the representative
10 from the North Central Health District. The commission
11 is we have Mr. Woolsey, Mr. Brown, Mr. Riccomini, and
12 you're probably wondering why he's sitting over there
13 by himself. He's got a neck injury, and it's a lot
14 better if he can sit in that chair. Mr. Nation,
15 Mr. Nation is also our vice chairman.

16 MR. NATION: Not by choice.

17 CHAIRMAN BRUCE: Mr. Eikum, Mr. Ketchum, Mr.
18 Steiner. I'm Mr. Bruce, your chairman. First business
19 in order is the adoption of the agenda. Did each
20 member receive a copy of the agenda? Are there any
21 changes or corrections to the agenda?

22 MR. EIKUM: My last name is spelled E-i-k-u-m.
23 It says, E-i-c-h-u-m.

24 CHAIRMAN BRUCE: Where is that at?

25 MR. EIKUM: Page 3 of 3.

1 UNKNOWN PERSON: Picky, picky, picky.
2 UNKNOWN PERSON: That's the minutes.
3 CHAIRMAN BRUCE: We're talking about the agenda
4 right now.
5 MR. EIKUM: Oh, I'm sorry.
6 CHAIRMAN BRUCE: No change to the agenda?
7 There's no changes then, the agenda is approved as
8 published. Next business in order is the approval of
9 the minutes. Each member receive a copy of the
10 minutes? Are there any corrections to the minutes?
11 MR. EIKUM: Yes, E-i-k-u-m.
12 CHAIRMAN BRUCE: Okay. Would you note that,
13 Ms. Norris. Is there any other changes or corrections
14 to the minutes? If not, the minutes are approved as
15 corrected.
16 The next business in order is the hearings for
17 the applications listed in the agenda. We have four
18 hearings tonight. Before we get into these hearings I
19 would like to go over how we run public hearing
20 procedures that we use. This commission must conduct
21 its meetings in accordance with the provisions of
22 Idaho's Open Meeting Law Manual, Idaho's Land Use
23 Planning Act, the county's zoning and subdivision
24 ordinances, commission's bylaws, and the procedures
25 outlined in Roberts Rules of Order. Idaho Code and the

1 Land Use Planning Act require the commission to conduct
2 hearings open to public comment for certain items of
3 business. Today's hearings will be classified as
4 quasi-judicial. We can also function in a
5 quasi-legislative capacity, but that won't happen
6 tonight. And the hearing will be conducted in
7 accordance with the following: The Chair will open the
8 hearing for our specific agenda item and ask if the
9 applicant is present. The Chair will request that the
10 administrator present a motion for the agenda item.
11 All motions are presented in the affirmative or
12 positive form. Commission members will declare
13 conflicts of interest, if any. Commission members may
14 at any point during a hearing direct questions germane
15 to the hearing to the administrator. Other ex-officio
16 members, the applicant, and citizens must refrain from
17 debate until the close of public comments. Now, on
18 that particular area I want (inaudible) people that are
19 going to testify concentrate on giving us all the
20 information that we need to make a decision. Once we
21 close the hearing to public comment we're going to be
22 very strict about any follow-up comments after that.
23 The administrator will present staff findings. The
24 Chair states the motion and opens the hearing to public
25 comment. The public hearing will begin with the

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1 applicant and proceed to those in support of the
2 application. Next the Chair will allow testimony from
3 citizens opposing the application. The Chair will ask
4 the administrator for written correspondence from
5 citizens. The Chair will ask for any further
6 testimony, and finally give the applicant an
7 opportunity to rebut. The Chair will close the hearing
8 to public comment and open to debate and discussion by
9 the commission. During the course of that debate and
10 discussion it's possible that a commission member may
11 want to ask an individual that testified for
12 clarification on a point, and if it appears that it's
13 new information, then we'll allow those that want to
14 provide a countering point of view to state so, but
15 we're going to try and stay away from that. I want
16 that testimony upfront before we close the hearing to
17 public comment. The applicant will always have the
18 last word regardless.

19 When the debate is complete the Chair will put
20 the motion to a vote and announce the results. Prior
21 to closing the hearing the Chair will explain following
22 actions and, if necessary, the process for appeal. Are
23 there any questions as to how we're going to run this
24 hearing this evening? Thank you.

25 The hearing for Agenda Item No. ZV2011-2, a

1 request for a variance by Edward and Carole Galloway is
2 now open. I recognize the applicants. They are right
3 here on the front row. With regard to the follow-on
4 hearing -- with regard to a follow-on hearing for the
5 full plat stage of a (inaudible) subdivision named
6 South Fork Estates. This request is to use the
7 variance provision from the Clearwater County
8 Subdivision Ordinance to modify the standards for the
9 access road by asking, one, for a reduction in the
10 minimum right-of-way width standard from 60 feet to
11 30 feet, except for 15 feet of the property line. Two,
12 for a reduction in the surface or finished width from
13 24 feet to 18 feet, except for 15 feet at the property
14 line; and, three, set aside the requirement to dedicate
15 the access road to public use. Article 4 Sections B
16 and D establish the minimum standards for access roads.
17 Article 8 of the subdivision ordinance establishes the
18 circumstances and procedures for granting a variance.

19 The property is zoned F1, which is the low
20 density rural district. The property is located in
21 Section 9, Township 37 North, and Range 01 East, in the
22 Freeman Creek area with access to Middle Road,
23 Clearwater County, Idaho. The property is not within
24 an area of city impact. The commission may, by
25 majority vote grant, conditionally grant, deny, or

1 postpone a decision until a new public hearing shall be
2 called on the application. The Chair requests that the
3 administrator present a motion for agenda item
4 ZV2011-2.

5 MS. KAUFMAN: I move that the commission approve
6 ZV2011-2, a variance request by Ed and Carole Galloway.

7 CHAIRMAN BRUCE: Is there a second to the motion?

8 UNKNOWN PERSON: Second.

9 CHAIRMAN BRUCE: Who seconded? For the record
10 (inaudible) recommend. Are there members of the
11 commission who wish to declare a conflict of interest?
12 Ms. Administrator, do you have additions to the staff
13 findings?

14 MS. KAUFMAN: No, I do not.

15 CHAIRMAN BRUCE: A motion has been made and
16 seconded. The question is: Shall the commission grant
17 approval of the main motion that is presented by our
18 administrator? The hearing is now open to public
19 comment. Those who testify must come forward and state
20 their name and address. I want you to come forward to
21 this podium, if you will, and state your name and
22 address. Before we begin that testimony, Ms. Kaufman,
23 do you have anything that showed what a variance is --
24 the definition of a variance, or can you summarize that
25 for us?

1 MS. KAUFMAN: Well, the variance -- the reason
2 for a variance is as a result of unique circumstances
3 such as topographical, physical limitations as herein
4 defined from provisions of this ordinance on a finding
5 that undue hardship results from the strict compliance
6 with specific provisions of requirements of this
7 ordinance, or that the application such requirements or
8 provision is impractical.

9 CHAIRMAN BRUCE: Thank you very much,
10 Ms. Kaufman. Does the applicant have testimony to
11 clarify or support their application? The Chair
12 recommends that the applicant present testimony. If
13 you wouldn't mind, gentlemen, if you would all remove
14 your hats, please.

15 MR. GALLOWAY: I'm Ed Galloway, 524 Galloway
16 Drive, Lenore, Idaho. My wife Carole and I are
17 subdividing a piece of land we've owned for 30 years,
18 approximately. I'm assuming everybody had already read
19 the stuff that come out in the packet, but I'll
20 highlight it a little bit on what we're doing here.
21 This subdivision has already been passed by this
22 commission. It was passed without any reference to the
23 external road, which is the road -- the straight road
24 across the field. At the time the planning and zoning
25 administrator said this commission couldn't address

1 exterior roads. The commission approved it. They
2 approved it with -- the only variance we had then, I
3 believe, was we reduced interior roads from the
4 required 24-foot to 18-foot. There was nothing done
5 exterior whatsoever because the zoning ordinance --
6 zoning or subdivision --

7 UNKNOWN PERSON: (Inaudible.)

8 MR. GALLOWAY: I get the two of them mixed up.
9 But somewhere in the ordinances there's a reference to
10 interior and exterior roads. You know, we have another
11 subdivision that was presented on the same day this one
12 was. It was approved, finalized, recorded and
13 partially sold. And it's the same way, there's no
14 reference to exterior roads. This is about 2000-feet
15 from Middle Road to my subdivision. The other one was
16 approved was 4,000 feet with no reference. We run into
17 a little bottle neck here -- I believe it was on the
18 final plat. You can see that circle there. What
19 happened there was --

20 CHAIRMAN BRUCE: You want to come in here and
21 point this out and make it easier (inaudible.)

22 MR. GALLOWAY: You got a pointer? Right here.

23 CHAIRMAN BRUCE: Can you turn it so the people
24 here can also see it?

25 MR. GALLOWAY: They don't want to see me. Right

1 here is the place in question. What happened is we
2 were given a right-of-way across this property owned by
3 Don -- what was his name?

4 UNKNOWN PERSON: Johnson.

5 MR. GALLOWAY: Johnson. And this was his dad
6 Harold Johnson. Don give us 15-feet on the east side
7 of that section line, and Harold give us 15-feet on the
8 west side, plus another 15-feet on the east side for
9 utilities only. Well, as it turned out, even though
10 our easement reads that we have a 30-foot access to our
11 property, as it turns out when the writing was put into
12 a picture, this 15-feet on the west side -- this is our
13 property, so we basically have 30-feet and only the
14 east 15 go into our property. You know, this is not
15 only -- it's a prescriptive road also. There's a
16 prescriptive easement here dating clear back into the
17 late 1800s. There was a house on the property when we
18 bought it, and this road has been used basically
19 forever for all we're concerned with here. But as a
20 lot of roads in Clearwater County and they still exist
21 all over the county. There's prescriptive easements
22 that aren't in writing. So Don and Harold give us a
23 written easement before they sold this land. You know,
24 our original plan was to go to court and get the
25 written easement to match the on-ground easement. The

1 county attorney -- we were looking at 20 to \$50,000 to
2 do that. Any time you go to court it's a minimum of
3 50. The county attorney said, why don't you just get a
4 variance. The county had no problem with a variance.
5 So the problem -- the thing is we've got 30-feet --
6 that's the section corner right there. Our gate is on
7 this side. The gate of the prescriptive easement is
8 27-feet, the existing road, which we will keep. We'll
9 keep all the prescriptive easements. So the variance
10 that we're after is for a miniscule distance of about
11 nothing. We need to go to 15-feet and then back to 60
12 because all interior right-of-ways are 60-feet. And
13 the county attorney wanted us while were are at it --
14 because there's some defugalties here, whether or not
15 the county has jurisdiction exterior to a
16 subdivision -- he wanted us to put in for these other
17 two variances. One is from 60 down to 30 for the
18 right-of-way, and the other one is from 24 down to 18
19 for the finished surface road. And I guess I could go
20 back to the -- that's all I (inaudible), Mr. Chairman.

21 CHAIRMAN BRUCE: Thank you.

22 MR. GALLOWAY: It was -- we had reports at the
23 original meeting that there was no problem getting that
24 road across there wide enough that it would be usable,
25 even though we didn't address it. And that's the

1 reason we went interior down to 18-feet because -- you
2 know, it's a long story. I've been before this P and Z
3 for over 30 years numerous times, and in a nutshell our
4 zoning and subdivision ordinance is a mess. You know,
5 we've been 30 years. We finally have a new comp plan.
6 Even though I'm not under the new comp plan our
7 subdivision does, you know, adhere to some of the new
8 comp plan, and I'll read you some of that.

9 You know, it says, provide for the protection of
10 private property rights. That's probably the most
11 important right we have as an American citizen. The
12 members of this commission took an oath to uphold the
13 Constitution of the United States, and I fully expect
14 them to do that. Having said that, we can go into, you
15 know, these subdivisions I fully agreed shouldn't harm
16 the neighbors. This subdivision doesn't harm anybody.
17 It's actually a win-win for the county. We're going to
18 have 10 houses on the subdivision. They're 6 to 12
19 acre lots, I believe. They were originally all 10, but
20 it didn't block out that way. What you see up there
21 will be the -- that's the preliminary plat. It will
22 also be the final plat. The final plat is the same as
23 the preliminary. So we pay taxes on that little piece
24 of land, \$96 a year, and when it's subdivided it will
25 bring in 10 to 20,000 a year for the county. So, you

1 know, my wife and I have spent our whole life on
2 Freeman Creek. I was born on Freeman Creek. And our
3 main objective our whole life was provide jobs for us
4 and everybody else. 25 years ago there was three
5 houses within an air mile of us. Now there's 60 plus.
6 It isn't all our doing, but a lot of it is. We've
7 provided a lot of jobs for carpenters, plumbers,
8 electricians, you name it, concrete, excavation.

9 Freeman Creek has been a rather busy place for
10 the last 25 years. People coming and going and
11 building. A good portion of Freeman Creek is not
12 permanent residents, it's part-time, summer. Whether
13 we like it or not, Freeman Creek is going to develop
14 because of the lake. You know, that's -- it's a
15 recreation area. It's not a rich man's paradise, but
16 it's a poor man's paradise. And we've sold a lot of
17 land to young couples with kids to get out, and that
18 was our objective. Let's go on with the comp plan.

19 It's easy to get sidetracked, and I'll try not
20 to. Promote, sustain economic development. We meet
21 that one. Preserve the rural nature of development
22 that has historically occurred in Clearwater County.
23 Well, we meet that one. If you want to talk historic,
24 I've been there 65 years. And plan future growth in
25 accordance with existing developmental patterns.

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1 Freeman Creek will develop. It already has, and I will
2 as long as I'm here try to continue.

3 Clearwater County is a dying county. Freeman
4 Creek is one portion of the county that is not dying.
5 General land use policies: Encourage the protection of
6 productive timberlands from residential development.
7 This isn't a residential development. This is the low
8 density rural development, which is the main
9 subdivision that the market wants nowadays, and they
10 have for quite a few years. It's a dead-end
11 subdivision. If you'll look in your packet you'll see
12 that we have restrictions. What do you call them?

13 UNKNOWN PERSON: CC&Rs.

14 MR. GALLOWAY: CC&Rs on this which limits one
15 residential dwelling per lot, no future subdividing.
16 You'll find a subdivision like this is very friendly to
17 timber because the people that buy it, you know,
18 they're -- they love their trees. And one that we did
19 do, and there's a reason for it, it says in your
20 (inaudible) plan encourage the platting of
21 subdivisions. There was nothing stopping Carole and I
22 from selling this in 20s, and we'd have had to do
23 nothing, no roads, no surveying, no nothing. But two
24 reasons we didn't: One, we do develop land. It's sort
25 of an offshoot of a lifetime of logging and ranching.

1 And I'm sure everybody here that works knows Clearwater
2 County, you don't just do one thing. You do everything
3 that you can possibly do to stay alive, so we do
4 develop land. So we have -- got a question on, Bobbi.
5 What we're on right now is different. There's two of
6 them here for us.

7 MS. KAUFMAN: That's the background part. The
8 background was the same for both packets.

9 MR. GALLOWAY: But we're under ZV2011-2, that's
10 different from this.

11 MS. KAUFMAN: Yes, we have two hearings. This
12 first hearing is just on the road, and then the second
13 hearing (inaudible.) But we have to do this before we
14 can do this.

15 MR. GALLOWAY: Thanks.

16 MS. KAUFMAN: But that's okay because they both
17 kind of coincide.

18 MR. GALLOWAY: Yeah. So should I not talk about
19 the second one right now?

20 MS. KAUFMAN: It's okay. You can do whatever you
21 want. It's your application.

22 MR. GALLOWAY: So I think I've generally covered
23 it, this first one for the variances. Like I said, it
24 passed this commission unanimously. It went to the
25 county commissioners and passed unanimously there. You

1 probably have the findings of fact from the county
2 commissioners. But we found -- we found later after
3 the county commissioners passed it that it doesn't go
4 to the county commissioners. It stops here, the
5 preliminary plat. Am I right on that?

6 MS. KAUFMAN: Yes.

7 MR. GALLOWAY: Okay. I've done a lot of
8 subdivisions and they have all went to the county
9 commissioners. The one we had approved, which isn't
10 ours it was one we worked up for a neighbor, it passed
11 here. Went to the county commissioners, then the final
12 come back and passed here and went to the county
13 commissioners, and it's recorded and being sold.

14 I'm not real sure -- I guess all the defugality
15 here on this particular one is to see if we can get
16 some sort of order in our ordinances; that's what it
17 appears to me to be. But I would like you to keep in
18 mind that it has passed. And we have letters from the
19 county attorney, you know, advising us how to get this
20 to meet county specs. And as you're looking at it
21 right there and reading about it it does meet county
22 specs, and it's fully within the powers of this
23 commission to grant these variances. They're granted
24 here, and they don't go to the county commissioners.
25 All that goes to the county commissioners is final

1 plat.

2 So, Mr. Chairman, wanted me to cover everything.

3 I would gladly do that if I knew what questions you had
4 to ask. So, Charlie, you got a question, I'll answer
5 it.

6 MR. NATION: On the -- just to clarify on the
7 access road what we're -- on the first part here on the
8 variance what you're wanting to do is vary the width
9 down to 30-feet up until the property line, then go
10 down to 15-feet; is that right?

11 MR. GALLOWAY: I have a 30-foot easement from the
12 county road to my property line.

13 MR. NATION: Okay.

14 MR. GALLOWAY: Okay. We want to vary -- yeah, we
15 want to vary the width of the right-of-way from 60 to
16 30.

17 MR. NATION: Okay.

18 MR. GALLOWAY: And the road from 24 to 18.

19 MR. NATION: That's inside the subdivision?

20 MR. GALLOWAY: No, that's outside, too.

21 MR. NATION: Okay.

22 MR. GALLOWAY: So there's three variances there.

23 MR. NATION: Right.

24 MR. GALLOWAY: Right-of-way, road, and then when
25 we hit the property line for whatever the thickness of

1 a property line is we have to drop to 15-feet on the
2 road.

3 MR. NATION: Okay.

4 MR. GALLOWAY: Am I right there? On just the
5 road.

6 MR. NATION: All right.

7 MR. GALLOWAY: So, you know, the site picture is
8 good. We've had everybody look at it. Not today, not
9 recently, but they've all looked at it before, and our
10 county attorney said there's no problem reducing the
11 road width on paper for the width of a property line,
12 whatever that is, and then go back to the 18-foot road.
13 So we're going 18 down to 15 and back on paper, right
14 there.

15 MR. NATION: Okay.

16 MR. GALLOWAY: And then -- yeah, that's the whole
17 variance. The external variance it was determined we
18 didn't need it. But I'm okay with going back to get
19 it. You know, I would really question whether the
20 commission here would have a right not to grant it
21 because it's already been approved, but I'll --
22 that's --

23 MR. NATION: That's all I had. I just wanted to
24 clarify where the -- exactly what we're looking at as
25 far as the problem area.

1 MR. GALLOWAY: What Mr. Chairman wants here is no
2 further comment later on, but I'll just bring up the
3 fact that 50 years ago this June I went to work peeling
4 poles in Clearwater County, and I've worked here ever
5 since. And it's really hard for me to sit here and you
6 gentlemen debate my private property, which is the
7 fruits of my labor, and I got to sit here and listen
8 to -- the last time I listened to the commission ask
9 questions amongst themselves that I knew the answer to,
10 was not allowed to give it. So I would really
11 appreciate it, even after the end of discussion, you
12 know, if you have a question the Chairman will allow
13 you to ask, I'm sure, because we're the ones that have
14 put in the labor to buy this land, and we're the ones
15 that want to get the labor out of it. I have one --
16 maybe we can address this when Rob Simon comes up,
17 assuming he is.

18 MS. KAUFMAN: Yes.

19 MR. GALLOWAY: Existing culverts be replaced by
20 18-inch diameter culverts. LHTAC standards call for
21 12. So I would like us to address that when it comes
22 up.

23 MS. KAUFMAN: That's a condition for the final
24 platting process.

25 MR. GALLOWAY: Pardon?

1 MS. KAUFMAN: That will be a condition once we go
2 to the final platting process.

3 MR. GALLOWAY: Okay. I'm going to read over a
4 few things I've got highlighted to see what we missed
5 so -- because you only get one shot at it.

6 MR. KETCHUM: (Inaudible) I got a question.

7 CHAIRMAN BRUCE: Do you want to ask him a
8 question?

9 MR. KETCHUM: I have one question. Actually I
10 have a few.

11 CHAIRMAN BRUCE: Wait a second. Do you want to
12 accept questions now or do you want to continue the
13 testimony?

14 MR. GALLOWAY: Sure, I'm ready.

15 MR. KETCHUM: I read a lot of this stuff. It's
16 like reading county history, and I'm a newbie at this.

17 MR. GALLOWAY: It's like swallowing sand; isn't
18 it?

19 MR. KETCHUM: But I saw this other plat map that
20 Bobbi you furnished in our last packet and had a
21 subdivision to the north of you that had a 60-foot wide
22 easement in it. Just out of curiosity, why didn't you
23 use that as an access or is that other property or
24 what's the --

25 MR. GALLOWAY: I don't own that easement. I own

1 this easement. I would gladly use that.

2 MR. KETCHUM: So that wasn't an option.

3 MR. GALLOWAY: That wasn't an option.

4 MS. KAUFMAN: And for clarification, Deryl,

5 that's a non-platted subdivision of 20 acres, so

6 therefore that road would not be dedicated to public

7 use; and therefore, Ed would not have the right to use

8 it.

9 MR. GALLOWAY: We did pursue that.

10 MR. KETCHUM: It looks obvious so I'm sure you

11 did. I just didn't know that.

12 MR. GALLOWAY: And we pursued other options, and

13 there's other options still out there. But as of right

14 now we own this right-of-way here so that's what we're

15 up to.

16 MR. KETCHUM: Okay, that -- no, never mind.

17 CHAIRMAN BRUCE: This is your time, gentlemen. I

18 would like for you to address any questions that you

19 have to him so we can get as much as possible and

20 (inaudible.)

21 MS. KAUFMAN: Ed, I wanted to let the commission

22 know why what happened in the past. The previous

23 administrator in our ordinance under dedications and

24 under some of this other things it said with any

25 proposed subdivision. The word was in -- got us

1 confused about the road requirements. This is for the
2 dedication part. I did get legal advice of why we had
3 to come back with a variance. So because legal said we
4 didn't have a variance for this road is why Ed had to
5 come back. But that rule under section B, dedications,
6 under Article 4 of the subdivision ordinance is why
7 this first was kind of missed. So if -- it was just a
8 misinterpretation of the code.

9 UNKNOWN PERSON: Can I ask a question of the
10 commission?

11 MS. KAUFMAN: Yeah.

12 UNKNOWN PERSON: The variance states that we're
13 trying to get a variance from 60-foot wide easement to
14 a 30-foot wide easement, but I don't see that a 60-foot
15 wide easement exists.

16 MS. KAUFMAN: It doesn't.

17 UNKNOWN PERSON: How do we --

18 MS. KAUFMAN: That's why he's asking for the
19 variance.

20 UNKNOWN PERSON: Right. How can you get a --

21 UNKNOWN PERSON: It exists in the subdivision
22 ordinance.

23 UNKNOWN PERSON: Well, right in the subdivision
24 ordinance, but there is no 60-foot easement that
25 exists, yeah.

1 MS. KAUFMAN: Right.

2 MR. GALLOWAY: We're asking for a variance for
3 the requirement for a 60-foot easement down to the
4 existing 30-foot. See, they're required to have 60
5 according to the subdivision ordinance.

6 UNKNOWN PERSON: That seems like it's only
7 required if you can acquire it. If there's no chance
8 of acquiring that then you're basically land-locked.

9 UNKNOWN PERSON: Well, then the person is --
10 their (inaudible) is to do what Mr. (inaudible) is
11 doing, which is to come in and request a variance.

12 UNKNOWN PERSON: Okay.

13 MR. GALLOWAY: If you'll go into your comp plan
14 you'll see -- and I don't think I can show it to you.
15 I think the Chairman has spent enough time in this. He
16 knows exactly what page it's on.

17 UNKNOWN PERSON: (Inaudible.)

18 MR. GALLOWAY: The comp plan addresses historical
19 and customary. You know, this is a historical
20 easement, and you're right, there's no way I can tell
21 the landowners what I want. It's what I got. So if it
22 was a steep hillside or something 30-feet wouldn't do
23 it. You know, I'm a road builder, and you're not going
24 to build an 18-foot road on a 30-foot easement on a
25 slope. But this is level basically. And we can get a

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1 good 18-foot road, all-weather road, on a 30-foot
2 easement because there's very few slopes. Other
3 questions?

4 CHAIRMAN BRUCE: Mr. Woolsey, do you have any
5 questions?

6 MR. WOOLSEY: No, I don't have any questions at
7 this time.

8 CHAIRMAN BRUCE: Mr. Brown?

9 MR. BROWN: (Inaudible.)

10 CHAIRMAN BRUCE: Mr. Riccomini?

11 MR. RICCOMINI: No.

12 CHAIRMAN BRUCE: Mr. Nation?

13 MR. NATION: (Inaudible.)

14 CHAIRMAN BRUCE: Mr. Eikum?

15 MR. EIKUM: Yes. How wide a road surface would
16 you be able to obtain there at the bottleneck where it
17 goes to 15? Would you still even get 15 or 12, 10?

18 MR. GALLOWAY: No, 15, a full 15. See, I have a
19 prescriptive easement going through there, and it's
20 27-feet wide. My gate's a -- it's a 16 or a 20, and
21 it's been there since I've owned the place, and the
22 road went to a residence there. I have maps of this
23 whole area. There was roads everywhere until one
24 landowner in the '50s bought up a lot of land and he
25 did away with a lot of roads, and so they disappeared.

1 MR. EIKUM: My problem isn't so much with the
2 easement or even the road width, but it's the private
3 road accessing a class B subdivision. I mean, you
4 talked earlier about private property rights and how
5 important they were. I don't know that I've ever --
6 not in the almost three years I've been on this
7 commission that we've seen a private property accessing
8 a class B subdivision, period.

9 MR. GALLOWAY: Well, just like I just told you, I
10 have another one, a private road 4,000-feet.

11 MR. EIKUM: That's before my time, I guess.

12 MR. GALLOWAY: This was -- it was brought before
13 this commission the same day this one was, and this is
14 our subdivision, and the other one was a neighbor's.
15 So we worked on it and got it done and kind of let this
16 one hang for a while. But it was approved and
17 recorded. And that's where the previous administrator
18 said the county has no jurisdiction exterior. But in
19 meeting with the county attorney on his opinion is the
20 county does have exterior. So I don't know if I
21 covered your question. I don't quite understand your
22 question.

23 MR. EIKUM: Well, how would the private road be
24 maintained outside the subdivision? Who would maintain
25 it?

1 MR. GALLOWAY: Well, you have a road maintenance
2 agreement there.

3 MR. EIKUM: But that only covers what is inside
4 the subdivision.

5 MR. GALLOWAY: No, it covers it all.

6 MR. EIKUM: I'm sitting here reading it.

7 MR. GALLOWAY: What does it say?

8 MS. KAUFMAN: The CC&Rs?

9 MR. EIKUM: What's that?

10 MS. KAUFMAN: The CC&Rs?

11 MR. EIKUM: No.

12 MS. KAUFMAN: Okay.

13 MR. EIKUM: Are you talking about addendum No. 1
14 or the CC&Rs?

15 MR. GALLOWAY: I think it is addendum No. 1. Is
16 that the road maintenance agreement?

17 MR. EIKUM: Yes.

18 MR. GALLOWAY: I got it here, but it will take me
19 a while to find it.

20 MR. EIKUM: It starts out that the original
21 subdividers agree to -- you and your wife agree to
22 maintain at their expense all roads within the
23 subdivision for a period of up to two years or until
24 five lots are sold, whichever comes first. At that
25 time a road maintenance committee will be formed from

1 the owners of all lots within the subdivision, but it
2 doesn't mention anywhere outside of this access road
3 that we're talking about. So who maintains that road?
4 Who plows it? Who gravels it?

5 MR. GALLOWAY: Take your little pen and cross
6 that out and put all roads within and leading up to.
7 This is a civil contract. It really has nothing to do
8 with this commission. It's a civil contract. I didn't
9 read that, or it didn't jump out at me. But the road
10 maintenance agreement is for the county road. So we
11 will -- you know, we can change that.

12 MR. EIKUM: Is it true, Mr. Simon, that that is
13 public right-of-way right up to that section line,
14 Middle Road there?

15 MR. SIMON: Yes. It's public right-of-way to.

16 MR. EIKUM: And that's maintained by the county
17 at this time?

18 MR. SIMON: It's public right-of-way. It's not
19 maintained by the county to that point, but it is
20 public right-of-way.

21 MR. EIKUM: So you would be maintaining the road
22 all the way back to Brown Road, then, is that how far
23 you maintain?

24 MR. SIMON: No. Actually the county maintains it
25 to about halfway between the Brown Road and the access

1 road (inaudible.)

2 MR. GALLOWAY: Let me read to you what the county
3 commissioners said. The county commissioners said in
4 their finding of fact -- they said -- see, I had an
5 agreement with the county commissioners to upgrade that
6 road, the county road. We don't go clear to Brown
7 Road. We go to -- I don't know what you call it. We
8 call it the red gate. There used to be a red gate
9 there. But it's probably a half a mile (inaudible)
10 C.A. Anderson's. That's about 3300-feet from the rock
11 place to my driveway. The county -- we went over this
12 once before. It's not a county of right-of-way. It's
13 a county road. Am I correct there, Bobbi?

14 MS. KAUFMAN: You can ask Rob, he's road
15 maintenance supervisor.

16 MR. GALLOWAY: Well, it come up in the
17 commissioners office, and Don Ebert tried to tell me it
18 was a county right-of-way, which is identified
19 different than a county road.

20 MR. SIMON: The road is cataloged as a county
21 road, dirt road, non-maintained, not maintained, not
22 graded and drained.

23 MR. GALLOWAY: But it's not a county
24 right-of-way. A county right-of-way can be out across
25 a field.

1 MR. SIMON: That's correct, yeah. Yeah.

2 MR. GALLOWAY: But this is a county road.

3 MR. SIMON: Yeah, but it's a non-graded and

4 drained, dirt county road. We don't maintain it.

5 MR. GALLOWAY: Right. Yeah, we agree there.

6 MR. SIMON: Okay.

7 MR. GALLOWAY: Okay. Chairman Ebert said there

8 is nothing in the ordinance dealing with condition of

9 the county road getting to a proposed subdivision. You

10 know, we went into this quite extensively about the

11 condition of that road from -- it would be the

12 3300-feet to my driveway. I agreed to the county, and

13 it's in here, to upgrade the road at my expense. They

14 sent me a contract to remove the brush and slash off of

15 it for a width of 20 -- 50-feet. Now, I removed the

16 brush and slash off of that 3300-feet to a width of

17 about 30-feet, I believe. Then we haven't proceeded on

18 with the upgrade. If you'll read this, Commissioner

19 Leach wanted me to do some turnouts. That's not a

20 problem. It needs drained bad. There's no ditch.

21 UNKNOWN PERSON: Which part of the road are you

22 talking about?

23 MR. GALLOWAY: The county road, not the driveway,

24 the county road. The existing county road, which would

25 be from the end of my driveway out that --

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1 UNKNOWN PERSON: We aren't really concerned about
2 that.

3 MR. GALLOWAY: You're right. That's what I just
4 read you. There's no provisions in the ordinance that
5 you could be concerned with.

6 UNKNOWN PERSON: You mentioned 3300-feet from the
7 red gate. Is that on this county road or county
8 right-of-way?

9 MR. GALLOWAY: There was a gate on the road.
10 It's no longer there.

11 UNKNOWN PERSON: So from the red gate up to the
12 bottleneck, we're talking about a mile, 3300 plus
13 roughly 2000-feet? So we're talking about privately
14 maintained a mile of road.

15 MR. GALLOWAY: About, yeah. I have a mile of
16 privately maintained road to my house, and it's -- you
17 know, I can show you right in this same area privately
18 maintained roads up to several miles, and there's no
19 complaints. In fact, people want them private. The
20 market wants private. They don't want the public
21 running all over. So, you know, we build for the
22 market because that's who buys. That's why I never
23 understood this. You can help me out here, Bobbi.
24 This public -- dedicated to the public.

25 MS. KAUFMAN: Something in the ordinance that can

1 be removed, but it was put in there in the '70s when it
2 was written.

3 MR. GALLOWAY: It was put in there when the
4 ordinance only dealt with subdivisions like downtown
5 squares, four houses per lot, and they called them Main
6 Street, side streets, arterials. These had to be
7 dedicated to the public. It's never been updated since
8 the '70s to address low density rural subdivisions. So
9 I'm assuming because it's still in there we have to get
10 a variance for it.

11 MS. KAUFMAN: Yes, because it's a law.

12 MR. GALLOWAY: We have plenty of precedent for
13 everything that's going on here; that's been passed,
14 approved and recorded. So we're not on virgin ground
15 here.

16 CHAIRMAN BRUCE: Mr. Eikum, any more questions
17 for Mr. Galloway?

18 MR. EIKUM: Not at this time.

19 CHAIRMAN BRUCE: Mr. Ketchum?

20 MR. KETCHUM: One thing about that bottleneck,
21 15-foot. If you're going to reduce the road width to
22 15-foot there because you have to because half of your
23 easement is going to run into that other piece of
24 property.

25 MR. GALLOWAY: Runs into the neighbor.

1 MR. KETCHUM: Can you put a 15-foot road through
2 there and have its ditches for drainage and not be
3 getting into Mr. Shinn's property?

4 MR. GALLOWAY: We don't need any ditches there.
5 It's on top of a -- it drains all away and we'll be
6 raising it 6 to 10-inches with bull rock and gravel.
7 So, you know, I've built a lot of these roads. You
8 know, some of this road -- this access road does need
9 ditches for sure and culverts. I think between the
10 county road and my property line there's at least three
11 culverts, but where we go into the property line it
12 drains all directions and --

13 MR. KETCHUM: Where were the two to one slopes
14 and the cuts supposed to be?

15 MR. GALLOWAY: There's a couple of places where
16 we go through a hill.

17 MR. KETCHUM: On the approach that road -- access
18 road.

19 MR. GALLOWAY: The prescriptive road doesn't
20 exactly follow the deeded right-of-way. And Mr. Shinn
21 has indicated to me he wants the road on the
22 right-of-way, and I agree. So the steepest slope we're
23 moving away from it. We're not even going to use it.
24 So probably at the highest slope that we have to do a
25 two to one slope will take up two feet.

1 MR. KETCHUM: So it's not going to encroach on
2 the edges of the easement?

3 MR. GALLOWAY: No. No, I'll be sure of that.
4 There's no problem getting an 18-foot road in that
5 30-foot easement here. Line of sight, you can see from
6 the county road clear into the subdivision. So you're
7 not going to come around the corner and hit somebody
8 because it's straight.

9 MR. KETCHUM: And the approach to the county road
10 you're talking about there's something about a
11 90-degree access?

12 MR. GALLOWAY: That's LHTAC standards.

13 MR. KETCHUM: There's enough radius -- there's
14 enough room in that (inaudible) to put a radius for
15 your approach in and out of that intersection?

16 UNKNOWN PERSON: By the time you take in the
17 30-foot easement and the 50-foot (inaudible)
18 right-of-way of the Middle Road I would think there
19 would be, yeah. See that Middle Road has 50-feet of
20 right-of-way.

21 UNKNOWN PERSON: So there's no problem there with
22 --

23 UNKNOWN PERSON: I certainly wouldn't think so
24 (inaudible) there should be plenty of room for radius.
25

1 MR. GALLOWAY: Yeah, there's a lot of county
2 roads 50-foot right-of-way.
3 UNKNOWN PERSON: (Inaudible.)
4 MR. GALLOWAY: There's a lot of county roads
5 18-foot right-of-way.
6 CHAIRMAN BRUCE: Mr. Ketchum, any other
7 questions?
8 MR. KETCHUM: No.
9 CHAIRMAN BRUCE: Mr. Steiner? Mr. Galloway, any
10 other questions for the commission? You have a
11 follow-on period here where you can testify again also.
12 MR. GALLOWAY: I get to testify on the next
13 hearing, right?
14 CHAIRMAN BRUCE: Well, yeah, you'll get to
15 testify then. That's a completely separate thing.
16 We're dealing with (inaudible.)
17 MR. GALLOWAY: (Inaudible.)
18 CHAIRMAN BRUCE: Thank you, Mr. Galloway. Is
19 there testimony from citizens supporting the motion?
20 Is there testimony from citizens opposing the motion?
21 Sir, would you say your name and address for the
22 record, please.
23 MR. JONES: My name is Garry Jones. I live in
24 Lewiston, Idaho. I'm an attorney. My office is at
25 1304 Idaho in Lewiston. I'm here representing Mr. and

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1 Mrs. Ed Shinn. One of the -- it's difficult to get --
2 because you have two separate hearings tonight they do
3 intermix quite a bit. One of the issues that I think
4 is important to start with, though, is whether or not
5 Middle Road is, in fact, a county road. I've been
6 trying to find that out. I've been talking with Andrea
7 Vanderpass for quite some time, and about a month or so
8 ago she did send to me a map that showed that clearly
9 that Middle Road was a -- was a county road to the west
10 of the section line -- is that Brown Road that comes
11 down -- I think it's Brown Road that comes down from
12 the north.

13 UNKNOWN PERSON: Yes.

14 MR. JONES: And they were continuing to look to
15 see if there are any other petitions or anything that
16 really could substantiate what everybody believes that
17 Middle Road is, in fact, a county road. I spoke with
18 her just again this week and she gave me two petitions.
19 She gave me the numbers of two petitions, had the title
20 company go to the assessor's office and get those two
21 petitions for me, and those two petitions only verify
22 what I was told the first time; and that is, no portion
23 of Middle Road to the east of Brown Road is a county
24 road. Now --

25 UNKNOWN PERSON: Do you want to point out on this

1 map where that's at?

2 MR. JONES: Well, I'll give it a try, but I think
3 you folks may all know where these roads are better
4 than I do.

5 UNKNOWN PERSON: I don't, so please do.

6 MR. JONES: I would guess that this is Brown Road
7 right here.

8 UNKNOWN PERSON: We can ask Mr. Simon. He's the
9 superintendent of the road and bridge.

10 MR. JONES: This is the Brown Road?

11 MR. SIMON: Yes.

12 MR. JONES: And then this road right here is
13 Middle Road?

14 MR. SIMON: Yes.

15 MR. JONES: The intersection I'm talking about
16 it's clear that there was a petition for Middle Road to
17 become a county road going to the west right here.
18 Unable to locate any type of petition or anything else
19 that indicates that going to the east that Middle Road
20 is, in fact, a county road. Now, one thing that I
21 think that kind of substantiates the idea that it's not
22 a county road is the easement that Mr. Galloway was
23 granted. And I have a copy of that easement for all of
24 you. I think that's enough. Can you assist me in
25 passing those out?

1 UNKNOWN PERSON: I will. Do you have more
2 copies?
3 MR. JONES: I do. How many more do you need?
4 UNKNOWN PERSON: Two more.
5 MR. JONES: Two.
6 UNKNOWN PERSON: Do you need a copy, Ms. Kaufman?
7 MS. KAUFMAN: No.
8 MR. JONES: I will represent to you that this
9 granted easement is an agreement between all of the
10 property owners in 1998 that were to the east of Brown
11 Road. I can put that out again. And each of these
12 property owners granted reciprocal easements to each
13 other. Excuse me, may I approach again. This is only
14 for illustration, but this says, Brock, and I believe
15 that Brocks were one of the people. So Brock owned
16 some property. Somebody owned property here. The
17 Johnsons were here. The other Johnson was there, and
18 it goes on up to Dale Richardson. Each of these people
19 entered into reciprocal easements together with Mr.
20 Galloway giving an easement across what's referred here
21 as Middle Road. I would just ask you to consider, why
22 would such a document be necessary if Middle Road was,
23 in fact, a county road. I don't think that Middle Road
24 to the east of Brown Road is a county road, even though
25 perhaps the county has maintained it periodically.

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1 It's not a county road. Which again means that the
2 area of maintenance is going to go from the proposed
3 subdivision. It's going to go south to Middle Road,
4 and then it's going to go west to Brown Road. And
5 there is no agreement for the maintenance of that road.
6 One of the things you do when you put a subdivision for
7 the people that are going to buy this property is I
8 think they have some right to believe that they're
9 going to be able to get to their property. And there
10 is no road maintenance agreement except that which is
11 within the subdivision. You'll see in those -- what I
12 handed out to you there's a pink tab, and that pink tab
13 is towards the end of the easement; and it states, the
14 easement -- and I've also highlighted in pink -- the
15 easement for ingress and egress shall not be deemed a
16 public right-of-way. I think that I suggest to you,
17 but what they're trying to say there is that we don't
18 want this road to be heavily used. Now, whether this
19 is a heavily used easement for a subdivision or
20 whatever, either public or private, they did not want
21 this to be a heavily used road. So included in this
22 easement -- if you ever have the time and patience to
23 read it -- you'll find that there is an easement
24 granted to the Galloways. That easement is for Ed and
25 Carole Galloway, their heirs, assigns and successors.

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1 Their heirs, pretty easy to figure out, and their
2 assigns and successors, though, I would submit to you
3 means that if they sell that piece of property that the
4 people that they sell it to gets that easement. It
5 doesn't mean that they can take that easement and give
6 it to ten different people. It doesn't mean that. And
7 that's clear by this document. It was never the
8 intention of the people that gave Mr. Galloway that
9 easement to do that.

10 Mr. Galloway spoke quite a bit about a letter
11 from Clayne Tyler. Mr. Galloway made it sound like Mr.
12 Tyler was attempting to assist him in getting through
13 this process. I don't know if you have a copy of that
14 letter. Bobbi, do they?

15 MS. KAUFMAN: I don't have it.

16 MR. JONES: Well, it was addressed to you.

17 UNKNOWN PERSON: There's a summary of it in here.

18 MS. KAUFMAN: Oh, about private versus public?

19 MR. JONES: Yeah.

20 MS. KAUFMAN: That was about giving us a
21 definition of what the difference between private and
22 public is.

23 MR. JONES: I think if you read that whole
24 easement you'll find that one of the things he says in
25 there is there's substantial question as to whether or

1 not an easement can be expanded beyond its initial
2 intention. In other words, I give you an easement and
3 it's anticipated that you'll use this for yourself.
4 That does not mean that you can use it to put any type
5 of a roadway across there. The same thing applies for
6 prescriptive easements. There may well be an easement
7 for Mr. Galloway or -- to go to his property.
8 Prescriptive easement means he's used it for a period
9 of time contrary to the desires of the property owners.
10 So you say you have a prescriptive easement, you can
11 only have a prescriptive easement when the Court says
12 you have one. But assuming that he does, again, he
13 cannot expand the use of that prescriptive easement
14 beyond what he's always used it for. What he has used
15 it for is his own access. So much for my legal
16 lessons. I apologize for that. What we're here for
17 tonight on this one is a variance. And it's not one
18 variance, it's three variances: One to have a variance
19 to go from 60-feet to 30-feet, one to have a variance
20 to go from 24-feet to 18-feet, one to have a variance
21 to go from 15-feet or what we call the bottleneck. We
22 want to have a variance that this roadway is not to be
23 dedicated to the public. Those are three or four
24 separate variances. And if you look at what a variance
25 definition -- if you look at the definition in your

1 subdivision ordinance it says that a variance can only
2 be granted by a showing by the applicant -- upon a
3 showing of undue hardship because the characteristics
4 of the site. There's no particular characteristics of
5 this site. Mr. Galloway does not have a sufficient
6 variance -- excuse me, easement, to get to the
7 property. He has -- he's not landlocked. He can get
8 there himself. What he can't do is take that easement
9 that's intended for him and expand it to serve ten
10 private residences. There's nothing about this. It
11 doesn't create an undue hardship for him because this
12 is the original intention of the easement. Somewhere,
13 and I believe that it was in one of the earlier
14 findings why a variance was granted to him on the
15 internal roadway, it said we should give him a variance
16 because of the cost of -- the variance was to go from
17 24-foot wide road to an 18-foot road and we feel that
18 he should -- that should be granted because of the
19 cost.

20 Cost can't be a reason for a variance. The
21 county subdivision ordinance has specific regulations.
22 They are to be followed unless there's some undo
23 hardship, or if there's some unusual characteristic.
24 But if cost was a hardship, I'd submit to you that that
25 would be a hardship every single time and it wouldn't

1 matter what your ordinance said. That's what you have
2 to keep in mind. You're here to say is there something
3 really unusual about this that we have to give Mr. and
4 Mrs. Galloway this variance for one, two, three, four
5 different things. It's not about the -- it's not about
6 the -- whether or not you comply with the comprehensive
7 plan. It's not about whether the county can raise more
8 money. That's not what a variance is about. Those are
9 good reasons, I'll grant you, for a subdivision, but
10 you still have to comply with the subdivision
11 ordinance, which he cannot do without these variances.
12 And you have to look at the variance themselves.

13 I want to just address just a few things that
14 were raised. (Inaudible.) If the county was so much
15 in support of the variances why wouldn't the county be
16 here -- the county, not the planning and zoning, Mr.
17 Tyler's office, in support of this? All you hear is
18 what Mr. Galloway's interpretation of what Mr. Tyler's
19 attempted to do. That letter was addressed to Bobbi
20 was pointing out the problems. It wasn't a suggestion
21 or any sort of a confirmation that Mr. Galloway should
22 be entitled to these things. That is solely your
23 decision. When Mr. Galloway, incidentally, says that
24 he can be selling his property in 20 acres and he would
25 have no problem, that's still not exactly right,

1 because you get back to that issue of is that an
2 expansion of his original easement. That easement was
3 there for his benefit. If he sells the property it
4 goes along, and there's nothing in here that says he
5 can sell it to four or five people. And remember that
6 the preliminary plat, rightly or wrongly that was
7 passed, did not address what we have today, which are
8 just the access issues. This is a new issue. It's a
9 new issue for you to decide.

10 And one thing that I would ask you to consider --
11 I spoke with Howard Weeks -- I'm sure that many of you
12 know him from the Evergreen Rural Fire Department, and
13 I learned quite a bit from talking to him. One of the
14 things he told me about was the International Fire
15 Code. And in the International Fire Code -- which is
16 not binding on you. It's not binding on you. I wanted
17 to make sure I said that to you. It was at one time,
18 but it's no longer binding on you -- the fire code,
19 it's a 20-foot minimum surfaced road. And the reason
20 for that -- you know, obviously you got a fire truck
21 down something less than 20-feet. But if you have a
22 fire or any emergency and there's people going out at
23 the same time there's people going in, that's what
24 they're concerned about. And if that should happen to
25 happen at that 15-foot area, you tell me how you're

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1 going to get a panicked person trying to leave a fire
2 what's going to happen when they meet up with a fire
3 truck that's going the opposite direction.

4 One last thing. I'm sure you'll be pleased to
5 hear that. You talk about, we have to do these things
6 because precedents have been set. Well, I'd suggest to
7 you that if you go ahead and grant this what you're
8 really doing is that you are taking your minimum width
9 of a surfaced road in Clearwater County down to
10 15-feet. I don't think that's what you want to do. I
11 don't think the facts are here for the variance, and
12 Mr. Galloway's petition should be -- for the variance
13 should be denied. If you have any questions of me I
14 would be pleased to answer them.

15 UNKNOWN PERSON: I have one question that really
16 might not be all that pertinent. Is it possible that
17 part of Middle Road could be public right-of-way by
18 prescriptive easement? Has any of it been maintained,
19 say, to a house?

20 UNKNOWN PERSON: Yes.

21 UNKNOWN PERSON: Could that, then, be considered
22 a public right-of-way to that house?

23 UNKNOWN PERSON: I can tell you that --

24 UNKNOWN PERSON: (Inaudible.)

25 UNKNOWN PERSON: (Inaudible) with public funds to

1 that house.

2 UNKNOWN PERSON: For five years or more?

3 UNKNOWN PERSON: Yes.

4 MR. JONES: 20 years now.

5 UNKNOWN PERSON: Is that what it is?

6 MR. JONES: It's 20 years, not five. It was

7 probably five when that happened.

8 UNKNOWN PERSON: It's five out of the last 20, I

9 think, isn't it?

10 MR. JONES: No, it's 20. But you were probably

11 doing that during -- while the five was still --

12 UNKNOWN PERSON: (Inaudible) last year, every

13 year for the last 20 years.

14 MR. JONES: But I don't know that that

15 necessarily makes it public roads because they maintain

16 them. But I don't think there's any petition -- any

17 action to do that. I also don't think that's uncommon

18 in this county or Nez Perce County or any county.

19 Incidentally, Mr. Galloway said something about your

20 county ordinance. I'd welcome you all to Nez Perce

21 County if you want to see a bad ordinance. Yours are

22 pretty good. So any other questions? Yes, sir.

23 UNKNOWN PERSON: If the variance is granted to

24 not dedicate the road to public use would that kind of

25 then go along with the intention of the prescriptive

1 easement and the limited use? And let me -- you know
2 what I'm saying, limit use.

3 MR. JONES: Pardon me? I'm not --

4 UNKNOWN PERSON: Limiting the use of a road by
5 granting the variance for not dedicating the road --

6 MR. JONES: Well, you're not going to be able to
7 dedicate this road. That's not going to happen.
8 Because even Mr. Tyler says there's a question of how
9 can you take an easement and dedicate it to public use;
10 that is not going to happen. But the problem is --
11 what's going to happen -- what is going to happen is
12 that the Shinns who have a place -- and they bought a
13 place out here because like a lot of people moving to a
14 rural area they want some privacy, just like those ten
15 people, if that was allowed, they want some privacy.
16 Instead of just having the Galloways go back there
17 they're going to have at least ten families, assuming
18 this is successful, going along there. That was never
19 intended in the easement. It's clear it wasn't.
20 That's an improper use of that easement, and as an
21 improper use of that easement, then, Mr. Galloway does
22 not have a sufficient easement to get back to his
23 property. Sir?

24 UNKNOWN PERSON: I've got a question. Is there
25 anywhere in the definition of easement that quantitates

1 the number of vehicles or people that can use it?

2 MR. JONES: The only place that I would submit to
3 you that it does is who it's granted to, and it's
4 specifically granted to Ed and Carole Galloway. And
5 that doesn't mean Garry Jones and my wife, and it
6 doesn't mean Mr. Eikum. It just doesn't mean that.

7 UNKNOWN PERSON: You stated earlier that also
8 their heirs or relatives or whoever they might want to
9 sell the property to.

10 MR. JONES: Well, no, I think that would be -- if
11 people were visiting they could do it, but they can't
12 put ten residents back there and apply to all of them.
13 I'm comfortable with that. Now, another attorney might
14 sit up here and say he's comfortable with my opinion
15 being wrong. But if you read the letter that Mr. Tyler
16 wrote he said the expansion of an easement is -- that's
17 a considerably difficult problem. And you're being
18 asked to give a variance one, two, three, four times to
19 an ordinance that's pretty clear, and then this is all
20 going to be foisted on the public to buy these things,
21 and there's no -- you're going to have people back
22 there buying this piece of property, and if it
23 starts -- I don't think the Shinns can -- at the last
24 meeting that none of you -- some of you couldn't reach,
25 the Shinns had come down here they couldn't go to their

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1 place because of the snow. That's a possibility for
2 all those people back there. Any other questions?
3 Thank you.

4 CHAIRMAN BRUCE: Is there testimony from other
5 citizens opposing the motion?

6 UNKNOWN PERSON: I got a question. Can you rebut
7 recent testimony or --

8 CHAIRMAN BRUCE: Yeah, there's a place for that
9 here. But right now I want to deal with if there's any
10 other citizens who have opposing testimony. Come up
11 here and say your name and address for the record,
12 please.

13 MR. INGLE: I'm Don Ingle, and I own the property
14 where the bottleneck occurs. In recent past you folks
15 have approved 40 to 50 lots that surround me on three
16 sides, okay, with no services, no sewer, no water, no
17 nothing, okay. I think it's great that the county
18 might be on the verge of collecting taxes, but for
19 those taxes you provide services down the road one way
20 or the other. And all this -- we're not talking about
21 what's already gone on. We're talking about what's in
22 the future.

23 I was a builder in California for 40 years, and I
24 watched all this stuff -- kind of stuff happen and the
25 price that people pay later for making wrong decisions.

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1 And, trust me, it will come around and bite you because
2 all you need is an attorney to move in there or a
3 doctor and you got big problems. And the problem comes
4 up, like getting to his place or whatever. I mean,
5 it's (inaudible.) I left California because of
6 lawsuits. That's what people like to do there. You
7 just got to start thinking ahead what you're doing when
8 you do this, okay.

9 One of the subdivisions I'm talking about, first
10 off, there's four of them that you approved: The
11 Walkers, the Grosecloses, Ken and Elizabeth Smith, Mike
12 Millers, all of those that you've approved. The
13 Groseclose subdivision Ed did the roads in. They're
14 beautiful roads. One of my complaints there was
15 drainage coming towards me. You folks, then, put a
16 stipulation these roads will be built right, which I
17 did do -- did a great job on the roads over there.
18 Okay, but they'll be no building permits issued until
19 someone checks those roads; that's a stipulation in
20 that subdivision, if I'm not mistaken. I think
21 something like that if this is approved should also be
22 included. There aren't nothing that says that whatever
23 on this paper or that paper gets done unless somebody
24 goes and looks at it and approves it. Basically,
25 that's it. Once you grant this 15-foot easement, if

1 you do, what's to stop anybody else from asking for
2 one. Sure, gees, I got a problem. The whole county
3 could have a problem. Anyways, any questions of me?
4 Did I say my name? Don Ingle, and where I lived?
5 Okay, anyways --

6 UNKNOWN PERSON: I have a question. Where do you
7 live? Where is your property?

8 MR. INGLE: I'm where the bottleneck occurs.

9 MS. KAUFMAN: He's right there.

10 UNKNOWN PERSON: So you're on the upper left
11 there of that property?

12 MR. INGLE: Yeah. I got 500 acres there.

13 UNKNOWN PERSON: So what if you wanted to do
14 something to your property in the future?

15 MR. INGLE: I don't.

16 UNKNOWN PERSON: What if you decided to or you
17 sold to somebody that decided to or wanted to?

18 MR. INGLE: I got frontage on all the way up
19 Brown Road and all the way on Freeman Creek on two
20 sides of my property.

21 UNKNOWN PERSON: So you do, but they don't.

22 MR. INGLE: No.

23 UNKNOWN PERSON: So you're covered. So you don't
24 need an easement ever.

25 MR. INGLE: No. Actually, John Allen, who was

1 our last -- one of our -- I think Ms. Galloway took
2 over for John Allen. We had a little meeting there at
3 the grange hall there in Cavendish, and he suggested --
4 we started complaining about all these little
5 subdivisions, okay. So he got us all together and
6 said, gees, how about we do this: We'll limit farm
7 ground to 40 acres. You can't have less than 40 acres
8 in a subdivision. One of my pieces is a 60-acre piece
9 I bought from Mr. Johnson. What am I going to do with
10 a 60-acre piece if I got to have 40 acres? Give the
11 other 20 away? So I went right down to Cuddy and
12 subdivided (phonetic) into three 20s. I have no
13 idea what this commission or this planning and zoning
14 commission does. You can make a lot of mistakes. And
15 you really ought to think about it. I'm just telling
16 you from 40 years of being in a home building business
17 and watching the lawsuits fly, you don't even know
18 what's coming. Anyways, I'll just hush up.

19 CHAIRMAN BRUCE: Any other questions for
20 Mr. Ingle? Thank you for your testimony. Is there
21 testimony from other citizens opposing the motion?
22 Come forward, state your name and address for the
23 record, please.

24 MR. KINYON: Yes. I'm Roger Kinyon. I live at
25 476 Aspen Lane. I live roughly 2.2 miles from this

1 here. I take care of the roads going into our
2 subdivision, about 95 percent of it anyway. And I
3 guess there's two things that really concern me when
4 you start cutting down the width of that road. We got
5 a 60-foot right-of-way -- or easement in our division.
6 And all I can do is relay my experience in removing the
7 snow in the wintertime. The last three to five years
8 it hasn't been good. With the right-of-way we've got
9 into our place the utilities have been taken out twice;
10 that's where there was 60 foot. But one time the green
11 box that holds everything was up on top of the snow
12 plow. And my concern is if you cut that down those
13 easements are going to be in there, and with the snow
14 we got they're going to be taken out.

15 Another thing, if somebody puts a fence in there
16 that fence is going to be taken out also. There's just
17 no place to go with that much snow. And I have caught
18 myself in several situations when we get a heavy snow,
19 even with your -- the regulations you got now with a
20 60-foot right-of-way and everything, there is no way
21 that you can get a fire truck or an ambulance down our
22 road, especially if you met a car. And that's with
23 regulations you've got now. So I just really hate to
24 see you bring those down.

25 UNKNOWN PERSON: What is the driving width or the

1 surface -- got 60-foot easement, what's the surface?

2 UNKNOWN PERSON: They're supposed to be 24-feet.

3 Now, in ours, it didn't make it. And I will tell you
4 this where -- and there's a couple of places it got
5 down to 12-feet. And even in the summertime it just
6 really gets beat all to Hell. I mean, it's a constant
7 job trying to keep that in shape. And once you turn
8 that over to the people that own that, it's their
9 expense to take care of it.

10 And that's another concern I've got, I mean,
11 it's -- you know, after we got our division and it was
12 sold out and all that we have spent \$8,000 bringing
13 that road up to where we felt it was a decent road, and
14 that's (inaudible.) So if you cut that down even more
15 you're passing that expense onto the people that's
16 buying those lots.

17 UNKNOWN PERSON: Ask you a question: When you're
18 saying cutting down are we talking about the bottleneck
19 itself, that small -- as Mr. Galloway said it's the
20 property line that's going to be cut down and then it
21 goes back over --

22 MR. KINYON: All I can tell you is this: Going
23 into our development the 30-feet that you're talking
24 about ours is 60-feet and already taken out the fences
25 and the utilities. There's just no place to go with

1 that much snow, guys.

2 UNKNOWN PERSON: I'm just asking because you
3 already have the 30-feet there, right, so one of the
4 variances is just say for a gate's width of 15-feet is
5 that what the question is here. The bottleneck is only
6 --

7 MR. KINYON: The bottleneck is the whole 30-feet.

8 UNKNOWN PERSON: But is it a fence line? It's
9 like having a gate there. So all of a sudden you're
10 coming into 30-feet and then through the gate -- I'm
11 using gate as an analogy 15-feet -- and then it opens
12 back up on the other side.

13 MR. KINYON: I don't think that would be that
14 much of a problem. The thing about it is your 30-foot
15 right-of-way in there. There's just not -- I mean,
16 when you're talking about the snow we've been getting
17 up here the last three out of five years there's no
18 place to go with the snow.

19 UNKNOWN PERSON: I'm going to ask my question one
20 more time: Your subdivision the road width is it
21 greater than 18? Is it 20? Is it 24?

22 MR. KINYON: You know, it's all over the place.
23 The narrowest place is probably 12-feet, and it was
24 supposed to be 24-feet, and it made it in a few places.
25 But you need 24-feet I'll tell you that, for safety

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1 anyway. And our road is exactly the same length as
2 that, within 200-feet anyway, and it's just two miles
3 down the road from that, too. But I just wanted to
4 pass that onto you what I have experienced trying to
5 keep our road clear.

6 MS. KAUFMAN: Is that Mr. Walker's subdivision?

7 UNKNOWN PERSON: No, that was Leland. That's Elk
8 Meadows.

9 MS. KAUFMAN: Elk Meadows, okay.

10 MR. KINYON: Leland put it in. And going down
11 it's -- I take care of Aspen Lane. I'm the only one
12 that's got a tractor (inaudible) I get elected. You
13 know how that goes.

14 UNKNOWN PERSON: You live in the Leland
15 subdivision?

16 MR. KINYON: Yes, year round.

17 UNKNOWN PERSON: So what's required by that
18 subdivision agreement for a driving width?

19 MS. KAUFMAN: 18.

20 MR. KINYON: What is required? It was supposed
21 to be 24-foot, 60-foot right-of-way.

22 MS. KAUFMAN: I thought they were 18. They were
23 varied to 18-feet.

24 MR. KINYON: That's what is on the plat anyway.

25 UNKNOWN PERSON: How's that?

1 MS. KAUFMAN: I thought Leland was the one that
2 was varied to 18-feet.

3 UNKNOWN PERSON: That's what I believe, too.

4 MR. KINYON: On our map it's got it mapped out as
5 24 and 60. I don't know beyond that. I know we spent
6 a lot of money on that road bringing it back up to
7 where it should be.

8 MS. KAUFMAN: Thank you.

9 CHAIRMAN BRUCE: What was your name again, sir?

10 MR. KINYON: Roger Kinyon.

11 CHAIRMAN BRUCE: Kinyon?

12 MR. KINYON: K-i-n-y-o-n.

13 CHAIRMAN BRUCE: Are there any more questions for
14 Mr. Kinyon? Is there testimony from other citizens
15 opposing the motion? State your name and address for
16 the record, please.

17 MR. MARVIN: My name is Chris Marvin.

18 CHAIRMAN BRUCE: Marvin?

19 MR. MARVIN: Marvin, M-a-r-v-i-n. I live at 522
20 Brown Avenue, Orofino, and I'm also concerned about the
21 snow removal problem. I've logged back there. Our
22 property actually is out at the Brown and Middle Roads
23 intersection out there. My grandad lived there all his
24 life. I'm a fifth generation, like Mr. Galloway. I
25 know a lot about what's going on up there. Like the

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1 Middle Road piece that he maintains he's pushing snow
2 out into our property right now because he can't get
3 off the county road, a regular county road.

4 I've logged back there, and I've had to plow my
5 way in and plow my way out. My grandad always told me
6 you'll go broke logging back there in the winter. So
7 the snow is a real bad concern back in there. You guys
8 grant this (inaudible) back there, you're going to get
9 people back there, and they're going to get snow bound.
10 They come to us and want pulled out. We're the ones
11 that's got good (inaudible) all the time you can get
12 through with the grader. And the road going that way
13 up there is a real problem because that's the way the
14 winds blow. It drifts them shut. You can be back in
15 there and wind comes up until you can get in there with
16 a CAT or a road grader, you're stuck. You got to have
17 a D6 or something to keep that road open. So just
18 before you pass this you're going to get yourself in a
19 bottleneck here.

20 CHAIRMAN BRUCE: Any questions for Mr. Marvin?
21 Would you wait a second, sir.

22 MR. MARVIN: Sure.

23 CHAIRMAN BRUCE: Any questions? Thank you for
24 your testimony. Is there testimony from other citizens
25 opposing the motion? Ms. Administrator, do you have

1 written correspondence from citizens?

2 MS. KAUFMAN: I've got written correspondence
3 from Sam Charles, the Ponderosa Area Manager of Idaho
4 Department of Lands, but they said based on the
5 documentation I provided this doesn't impact state
6 trust lands at this time so they had no concerns.

7 CHAIRMAN BRUCE: Thank you. Is there any other
8 testimony, especially neutral? You don't have to
9 commit yourself one way or the other, just like to
10 testify.

11 MR. JONES: Isn't that contrary to your announced
12 agenda for the meeting?

13 MS. KAUFMAN: No.

14 MR. JONES: I think you said when all the
15 testimony that was contrary that then there would be
16 rebuttal by the -- by Mr. Galloway. I think that's
17 what you announced to us.

18 CHAIRMAN BRUCE: The rebuttal will come up next
19 after that.

20 MR. JONES: Nobody said anything about neutral,
21 though.

22 CHAIRMAN BRUCE: Well, that's the way we're
23 running it, sir. Please don't interrupt me on that
24 again. Mr. Golding, would you like to --

25 MR. GOLDING: I've got some information that I

1 think would be pertinent, some neutral.

2 CHAIRMAN BRUCE: Neutral, for or against?

3 MR. GOLDING: Do you have to commit? It's got to

4 do with where Middle Road is.

5 UNKNOWN PERSON: Name, please.

6 MR. GOLDING: My name is Terry Golding. I'm a

7 land surveyor. I've done most of the surveying up that

8 way.

9 UNKNOWN PERSON: Do you have an address also?

10 MR. GOLDING: Yes. P.O. Box 1818, Lewiston,

11 Idaho.

12 UNKNOWN PERSON: Thank you.

13 MR. GOLDING: I did a survey a couple of years

14 ago for the Marvins and I ended up trying to retrace

15 out where Middle Road is and started to come into some

16 interesting information. I brought two copies of a --

17 it's a Metzger map. I don't know whether you guys want

18 to pass this around or not.

19 UNKNOWN PERSON: Do you want a copy for each

20 person?

21 MR. GOLDING: I only brought a couple of big ones

22 there. If you can see in that section 18 there's a

23 road that kind of goes east/west through 18, but it

24 hardly resembles current Middle Road. Middle Road

25 typically as built goes along the east/west one quarter

1 line Section 17. It goes from the west quarter corner
2 to the east quarter corner and varies just a little
3 bit. This one here comes into 17 a little ways off of
4 Brown Road and starts heading north and east, and
5 actually heads quite a ways up there and then starts
6 sweeping back down. So I started to do some research
7 there and pulled up a whole lot of petition notes here
8 for road opening and so on. And I think there was a
9 road by a J.A. Holliday, a dedication and acceptance by
10 the county board of commissioners that actually has a
11 metes and bounds calling on it. I haven't gone through
12 here and plotted out to find out if this is it, but it
13 looks like it. I know there's been a lot of research
14 done to try and find these road notes, and I'm not sure
15 exactly how I stumbled upon them. These are not the
16 originals. These are copies. But one of the problems
17 might have been it was under the Holliday Road,
18 H-o-l-l-i-d-a-y. It's a person's name. And when you
19 track road notes a lot of times you track them by the
20 name, so probably people looking for Middle Road.
21 There's a wide variety of different dedications in
22 here. They said the road or that area is a spiderwork
23 of roads out there. And this one here is done -- let's
24 see. What year is this -- around 1911. So it's been
25 there a while. So throwing this up for debate or

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1 whatever, Middle Road has got an offer and acceptance
2 by the county going through 17 and then north and
3 easterly; that's a dedicated road and that has never
4 been abandoned. There's been no abandonment procedure
5 that I know of for that other than not use.

6 CHAIRMAN BRUCE: (Inaudible) that we have here
7 could you come in and point out what you're saying?

8 MR. GOLDING: Sure. Here's Middle Road. And I'm
9 not sure if this is Brown Road or you got to go one
10 more over this way here, but this is the east/west --

11 CHAIRMAN BRUCE: Mr. Simon, is this Brown Road
12 right here?

13 MR. SIMON: Yes.

14 CHAIRMAN BRUCE: Okay.

15 MR. SIMON: Just to avoid confusion that road
16 used to be called the Summers Road. It's now called
17 the Brown Road.

18 CHAIRMAN BRUCE: Okay.

19 MR. GOLDING: It was interesting trying to track
20 the history of these roads (inaudible.) Anyways, this
21 is the east/west one quarter line, and for the most
22 part Middle Road is built on the east/west one quarter
23 line. According to the Metzger map here is Section 17.
24 You barely get into 17 and it starts heading north and
25 east, and it becomes pretty close to the section corner

1 up here and then comes back down. That's the dedicated
2 version of Middle Road. Now, whether it gets abandoned
3 by nonuse, I don't think so (inaudible) dedicated
4 (inaudible) dedicated and accepted by the public. I
5 kind of (inaudible) just build it and see what happens.
6 But it's a little bit more complicated than that. But,
7 anyways, there is a dedicated road that comes up
8 through here (inaudible) and then this, I believe,
9 would be prescriptive road.

10 UNKNOWN PERSON: Well, if Summers Road is now
11 called Brown Road, then no, it's not on this up here.
12 This is Brocks right here.

13 UNKNOWN PERSON: (Inaudible.)

14 UNKNOWN PERSON: (Inaudible.)

15 UNKNOWN PERSON: (Inaudible.)

16 UNKNOWN PERSON: (Inaudible.)

17 UNKNOWN PERSON: That's not Brown Road.

18 MS. KAUFMAN: Rob, you're ex-officio.

19 CHAIRMAN BRUCE: Mr. Simon, would you address
20 (inaudible.)

21 MR. SIMON: I stand corrected. After looking at
22 that map I was assuming that that section line is the
23 Brown/Summers Road, and, no, it isn't. The
24 Brown/Summers Road would be over there. That's
25 correct.

1 MR. GOLDING: This is a 160-acre piece. That's a
2 quarter section.

3 MR. SIMON: Yeah, I stand corrected.
4 Nevertheless, we're just a section -- a half a section
5 off of where these roads lie. Yeah, it just isn't on
6 the map -- that map.

7 MR. GOLDING: The fact that it was dedicated and
8 accepted, and the fact that it shows up on a Metzger.
9 I don't have any aerial photographs that show an old
10 road bed. (Inaudible) there are archives (inaudible.)

11 UNKNOWN PERSON: (Inaudible.)

12 UNKNOWN PERSON: (Inaudible.)

13 MR. GOLDING: Not that I saw on -- yeah, on the
14 aerial photographs I cannot see (inaudible.) It may
15 have never been built. It may have been surveyed,
16 dedicated, accepted and never built. (Inaudible.)

17 CHAIRMAN BRUCE: Any questions from the
18 commission of Mr. Golding?

19 MR. SIMON: I do, Mr. Chairman.

20 CHAIRMAN BRUCE: Sure.

21 MR. SIMON: I hate to muddy the waters, but have
22 you found the R.N. Crow petition?

23 MR. GOLDING: I've got just about every petition
24 in here.

25 MR. SIMON: Now that one -- this is how it's laid

1 out right through the middle of 17.

2 CHAIRMAN BRUCE: I'd like to clarify for the
3 purposes of the people out here in the gallery
4 Mr. Simon is the road superintendent. That makes him
5 an ex-officio member of this commission, so that's the
6 reason we're allowing his comments. Go ahead.

7 MR. SIMON: And I don't have anything other than
8 my own notes here, but I'm surprised that this hasn't
9 been found, the Crow petition. But it does, it follows
10 almost exactly the Middle Road right through the middle
11 of 17, and then it goes northeasterly to the
12 intersection -- four corners of 9, 10, 16, 15, which is
13 pretty close to the way this road -- actually it would
14 go -- yeah, okay. Can I -- certainly. Okay, the
15 petition -- the R.N. Crow petition dated -- this is the
16 -- this is what I've been going off of all along dated
17 1911, I believe. It's a petitioned right-of-way,
18 August 1910. And it goes like -- okay, now help me out
19 (inaudible.) It starts over here, and it goes right
20 through the middle of Section 17, which would be --
21 fall right here, to the section line between 16 and 17,
22 which would be this one?

23 UNKNOWN PERSON: Yes.

24 MR. SIMON: Yes?

25 UNKNOWN PERSON: Yes.

1 MR. SIMON: Okay, and according to that, then,
2 that point right there then it goes northeasterly to
3 this four corners right here. So the only place that
4 the existing -- it looks like (inaudible.)
5 UNKNOWN PERSON: (Inaudible.)
6 MR. SIMON: Yeah, that's --
7 UNKNOWN PERSON: (Inaudible) that's this line.
8 MR. SIMON: This line is this line, right?
9 UNKNOWN PERSON: Yeah, this line is the line
10 between 16 and 17.
11 UNKNOWN PERSON: No, no.
12 (Indiscernible discussion.)
13 MR. SIMON: So same thing, this petition takes
14 Middle Road to this point right here, and then it goes
15 this way, but I think what we're dealing with is from
16 here to here. That's what we're concerned with.
17 UNKNOWN PERSON: Right.
18 MR. SIMON: And according to this petition
19 (inaudible) right on that except for this right there.
20 The petition takes it to here. The road is here.
21 UNKNOWN PERSON: What was that petition for,
22 dedication public -- public acceptance?
23 MR. SIMON: Yes.
24 UNKNOWN PERSON: Bobbi.
25 UNKNOWN PERSON: It only goes to right there

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1 where it starts to go northeast?

2 UNKNOWN PERSON: It actually goes -- well, it
3 goes on up. I hate to even point it out on this map
4 because it doesn't have the sections on it. But it
5 does go --

6 MS. KAUFMAN: Oh, let me -- here, Rob, hold on.
7 That has a section, and does that have a section?
8 Those are the plats.

9 (Indiscernible discussion.)

10 MR. SIMON: But I think my point is that this
11 petition takes the Middle Road almost right where it is
12 right now, this petition.

13 MR. GOLDING: Yours was in 1910?

14 MR. SIMON: Yeah, and it's the -- again, it's the
15 R.N. Crow petition.

16 MR. GOLDING: This one here is in 1911, which
17 must have been some bad years for the county because
18 that road doesn't look like (inaudible.)

19 MR. SIMON: Well, as you know so many of these
20 petitions were written and when they went up to build
21 the road (inaudible.) And then also I just would like
22 to add one more thing. We're sitting here talking
23 about snow removal, and I guess when we're plowing snow
24 on a county road we really don't worry too much about
25 when we wing the snow off, which we have to do when we

1 get a large amount of snow, we really don't worry about
2 keeping that snow within our right-of-way, whatever it
3 is. So if you're dealing with a 30-foot right-of-way
4 and you have 5-feet of snow and you have to wing that
5 snow off, I'm thinking -- just a little bit of note
6 scratching there -- I'm thinking you could not keep
7 that snow within 30-feet -- within a 30-feet
8 right-of-way, especially if you're dealing with 5-foot
9 snow drifts.

10 CHAIRMAN BRUCE: Is there a requirement for you
11 to try to keep it within?

12 MR. SIMON: Not that I've ever seen,
13 Mr. Chairman. You know, people don't want their fences
14 winged, of course, we try not to do that. But where
15 it's necessary we'll push the snow as far out as we
16 need to to make more room. So, okay, thank you.

17 CHAIRMAN BRUCE: Mr. Golding, can you clarify
18 what sections we're dealing with here?

19 MR. GOLDING: Yeah, just 17 and 16, and that's
20 the section line along -- well, where it says access --

21 CHAIRMAN BRUCE: This is the section line, or
22 this is the section line?

23 UNKNOWN PERSON: No, that's not the section line.
24 That is the section line.

25 CHAIRMAN BRUCE: Right here.

1 MR. GOLDING: Only one other comment there.
2 When, I guess, Mr. Jones was talking about that
3 easement, the 30-foot easement there, but he was
4 figuring it as either overburdening it or something. I
5 don't know if the easement is an exclusive or
6 nonexclusive. If it's exclusive then there's
7 conditions to it. If it's nonexclusive you can assign
8 it to people. You can use it for what you want.

9 CHAIRMAN BRUCE: Which one are you talking about?

10 MR. GOLDING: I think he was talking about the
11 30-foot easement where it says access road coming up
12 there from Middle Road.

13 UNKNOWN PERSON: That's nonexclusive. That's
14 what I read (inaudible.)

15 MR. GOLDING: Okay. That's all I had to say. Do
16 any of you have any questions?

17 UNKNOWN PERSON: (Inaudible) Mr. Eikum,
18 (inaudible.)

19 MR. EIKUM: Yes.

20 CHAIRMAN BRUCE: Okay, now, there's reference in
21 here for a perpetual nonexclusive easement of 15-feet.
22 Can you describe that to us?

23 MR. GOLDING: If it says nonexclusive then you
24 can assign it to other people and you can use it for
25 other uses. If it says ingress and egress it's locked

1 on.

2 UNKNOWN PERSON: Are you talking about the

3 utilities easement?

4 UNKNOWN PERSON: No, not yet.

5 UNKNOWN PERSON: Okay.

6 UNKNOWN PERSON: And there is also a reference to

7 a perpetual 30-foot easement for utilities.

8 MR. GOLDING: Okay, yeah, if it just says for

9 utility that's utilities only, not ingress and egress.

10 CHAIRMAN BRUCE: I think that's all the questions

11 I have. Mr. Ketchum, you have a question?

12 MR. KETCHUM: Yeah -- no. Well, it had to do

13 with what you read there. It talks about a 15-foot

14 easement, nonexclusive, 15-foot easement. We're

15 talking about two 15s here.

16 MR. GOLDING: Complicated, I know. It's a mess.

17 UNKNOWN PERSON: This is west of this section

18 line 15-feet.

19 MR. KETCHUM: Okay. So what about the other

20 side? Is there another one there?

21 UNKNOWN PERSON: I think it's 15 on either side.

22 UNKNOWN PERSON: I --

23 MR. KETCHUM: That would have been to the

24 Johnsons.

25 UNKNOWN PERSON: The Donald Johnson.

1 CHAIRMAN BRUCE: On page 4 of the document that
2 Mr. Jones gave us there is a reference to a perpetual
3 30-foot easement for utilities across the westerly
4 30-feet of the northwest quarter of Section 16.

5 UNKNOWN PERSON: It's nonexclusive on both sides
6 of the section, east and west, the ingress/egress
7 easement.

8 CHAIRMAN BRUCE: Say that again so we understand
9 what nonexclusive means.

10 MR. GOLDING: Nonexclusive means there's no
11 restrictions on it as far as who you can assign it to,
12 who all you can give access to. If it says ingress and
13 egress it's pretty much driving in, driving out and
14 commerce or whatever. Most easements nowadays say
15 ingress/egress and utilities only because you've got
16 all sorts of franchise utilities that go in there. But
17 this one has got ingress and egress for 30-feet, and
18 then an additional one utilities only, I think, on the
19 east side.

20 UNKNOWN PERSON: The entire utilities easement is
21 30-feet, but it begins on the section line and goes
22 east. It overlaps 15-feet, and then another 15 is
23 utilities only.

24 UNKNOWN PERSON: Yeah, they could bury the
25 utilities right in the road if they want to.

1 UNKNOWN PERSON: In your opinion, from what we
2 all know tonight so far, can this grant of easements
3 18009, can this be assigned to 300 people, 400, 500 or
4 just strictly Mr. and Mrs. Galloway and who they sell
5 the 100 acres to?

6 MR. GOLDING: Again, me giving legal advice is
7 probably the wrong person to ask, but indeed there is
8 such a thing as overburdening, and that would have to
9 be a separate legal action against somebody. If it's
10 unrestricted, it's unrestricted, and it would have to
11 be proven that it's overburdening.

12 CHAIRMAN BRUCE: Any other questions for
13 Mr. Golding? Thank you for your testimony, sir. Are
14 there any other people who wish to testify in the
15 neutral category?

16 UNKNOWN PERSON: You have someone there,
17 Mr. Bruce.

18 CHAIRMAN BRUCE: Sir, neutral?

19 MR. STRAHAN: Yeah, neutral.

20 CHAIRMAN BRUCE: State your name and address for
21 the record, please.

22 MR. STRAHAN: Jerry Strahan, 3240 Highway 64,
23 Kamiah, Idaho. I'm a licensed real estate agent, land
24 developer and land specialist. I want to attempt to
25 clarify the word assigns. I haven't read Mr.

1 Galloway's easement, but I was listening to the
2 testimony and apparently it contains the word assigns.

3 CHAIRMAN BRUCE: Yes.

4 MR. STRAHAN: My understanding of that law or
5 that provision in the law is if an easement has a -- if
6 he has a nonexclusive easement and he has a parcel of
7 land he chooses to divide that into 10 parcels he can
8 assign each of those persons access to the easement.
9 If he were to sell it to one person that person would
10 have access to that easement. It also contains the
11 word heirs. If he had 32 heirs, 32 heirs would have
12 access to that easement. So there's no limitation on a
13 nonexclusive easement as to the number of persons that
14 have access to it once the title is transferred
15 (inaudible) divided up. Any questions?

16 CHAIRMAN BRUCE: Thank you, Mr. Strahan. Is
17 there any other neutral testimony? At this point the
18 applicant may rebut any and all testimony.

19 MR. GALLOWAY: Mr. Chairman, I want to approach
20 the map, please. I have this Metzger map at home, and
21 I also have another one a little older. If we're going
22 to get into these maps and these dedicated easements,
23 I've lived here 65 years. I was here a long time
24 before the lake went in. I traveled every road out
25 there, either spotlighting or hunting one or the other.

1 This road here, if you'll go into the archives and
2 Clayne Tyler took me in there and showed me, it goes
3 clear down to the Stalnaker place on the river, a
4 dedicated easement clear down and it has Stalnaker's
5 name on it on the river. That's how they got in and
6 out of the Stalnaker bench on the river. There was a
7 school house down Freeman Creek Ridge, and it is on one
8 map. It's not here, I don't believe. What we do have
9 here when I was young there was a school house on
10 Freeman Creek, and it's on this map. And if we're
11 going to get into dedicated easements Don Ingle is
12 really going to like this: There's a road that comes
13 off of this corner up here -- it's even on this map.
14 There's a road that come off this corner that comes
15 down and loops in by Don Ingle's equipment, junk pile,
16 and come back through here and connects with Brown Road
17 now. That's called Teakan Loop, and it is a dedicated
18 easement. And according to this map -- and this map is
19 right -- there's another road comes off of here and
20 comes off of Teakan Loop where Don Ingle's junkyard is
21 is the Prucler place and then it comes off the Teakan
22 Loop Road and goes down through our place and accesses
23 the Bennett land, with Bennett just through a court
24 action or an agreement got another right-of-way out.
25 But if we're going to get into dedicated easements

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1 they're all over this place, lots of them. So we're
2 all going to have plenty of access. Some will like it
3 and some won't. So -- I'm putting forth that to my
4 driveway is a dedicated easement. And according to
5 what Terry said and this here it appears to be. It's
6 also a dedicated easement on through the county claims
7 it to the state line. This is state land. Mr. Shinn
8 owns 160 here and the State owns 480 out of that
9 section. When I logged out here -- we have had a lot
10 of testimony on snow. I suggest if you don't like snow
11 don't live around here. There's a lot of people that
12 do live here that have no problem. I have a son-in-law
13 from Texas got close to two miles of private road.
14 I've never heard a complaint out of him ever. You
15 know, he loves it up there where he lives. When I sell
16 land I'm very careful to tell all the facts. I've had
17 people say they don't like bears and cougars, and I
18 tell them, you don't want to buy here. If you don't
19 like snow don't buy here. This road doesn't drift any
20 worse than Brown Road. I've hauled out of there all
21 winter long. I've hauled out of there in the winter of
22 '85 and '86 where we had 5-feet of snow. And I will
23 admit it was a job keeping that open. The worst job
24 was the county road because it's in a ditch. You know,
25 where to wing the snow. So we had to take the CAT and

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1 push sideways and get it out of there. But you either
2 like the country with the snow or you don't belong
3 there. It reminds me of that movie Snowy River. When
4 that kid come upon the mountain and all them guys rode
5 down on horses and said, you don't belong here, kid,
6 until you prove yourself. There are people that will
7 never complain, and they'll be people gone the first
8 winter, I'll guarantee it. So if we're going to get
9 into accesses and dedicated easements we're going to
10 have a real can of worms.

11 Now, some other (inaudible) this didn't come up,
12 but I'm going to read some portions of -- this is a
13 letter by the Shinns on my first attempt.

14 UNKNOWN PERSON: What is the date?

15 MR. GALLOWAY: June 10th, 2008 to Bobbi
16 Kaufman, proposed housing development of Ed Galloway.
17 Dear madam -- I won't read it all. You know, I wasn't
18 going to bring this up until, you know, they went from
19 a personal letter to a lawyer. So -- and their lawyer
20 was what you would expect of a lawyer, if you're paying
21 him. It says, number one, there's a lot of
22 inaccuracies in this letter strictly for the benefit of
23 the Shinns. They want this commission to, you know,
24 see it their way, of course. I want you to see it my
25 way. He says, most of my subdivision is in a draw and

1 inappropriate. That's not true. 90 percent of that
2 subdivision is flat as a table. It's got farm ground
3 in it. There's 35 acres farm ground and about 70 acres
4 of timber. The Southfork of Freeman Creek goes through
5 it. It's a year-round creek. It doesn't flow much
6 coming in at the top, but on the east end it flows
7 year-round. He says there's buried utilities which
8 need to be moved to upgrade the county road. Mr. Shinn
9 put them utilities in and they're illegal. There is a
10 state ordinance you cannot put buried utilities in a
11 county road. So I'm assuming him and Clearwater Power
12 are going to be responsible for -- if we improve that
13 section of county road is going to be responsible for
14 moving them or doing something. I'll leave that to
15 them. He says, perhaps, double -- there's 10 lots.
16 Perhaps, double that number could be built. Not as
17 long as these CC&Rs are in effect, and they are a civil
18 contract. So the heavy drift area, he's true, but what
19 he said down here, he said somebody asked about the cut
20 and the slope. He said there's one cut that reduced
21 the road to 20-foot or less. There is one cut but it
22 wouldn't reduce the road that much, mainly because the
23 cuts on the east side where I'm not going anyway. He
24 said the last half mile needed to be maintained by the
25 homeowners, that's true. Like I said, if you don't

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1 want to maintain your road you don't belong out there.
2 He questions a domestic water, which is not a -- we're
3 not concerned about that here, but he did go on to say
4 that drilled wells in this area are often
5 non-producers. I'm personally aware of 40 wells and
6 one non-producer, so that's an inaccuracy. Then he
7 gets into Andy's bailiwick, you know, the septic tanks
8 are going to overflow and go down Freeman Creek and
9 pollute the lake. We got that on two letters. But
10 here is the portion that I really wanted to read. It
11 shows the Shinns, you know, the extent they will go to
12 stop this. They said, quote, I believe that Clearwater
13 County is a beautiful and an unusual place. True. I
14 think it's worth preserving, and that is why my wife
15 and I have planted 75,000 trees on our 280 acres. I
16 would comment these trees are really growing and
17 they're nice. They were paid for by the taxpayers. We
18 know that the development is inevitable so they admit
19 that development is inevitable, but they go on to say
20 we will not be selling or developing it in our
21 lifetime. So what they're asking this commission is
22 stop development in Clearwater County until they pass
23 on when we can have at it. That's big of them. We are
24 not obstructionists or environmental hardliners. They
25 just want to stop me from using my fruits of my labor

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1 over 50 years, and I'll stay away from hearsay.
2 They're farmers and ranches from Oregon, and if you
3 would go where they're from you would understand why
4 they think Clearwater County is such a beautiful place.
5 Housing projects they want limited to areas of
6 all-weather roads. They will be. When I'm done it
7 will be an all-weather road year-round. Where
8 utilities are available, they will be. They'll be
9 either totally underground utilities or we may fly
10 across that access road. If we go overhead there -- we
11 have the right-of-way to go overhead there. We haven't
12 made that decision yet. The point of me reading this
13 is it wasn't read, and there's some new people here.
14 Their letter and their selfishness failed to stop this
15 project so they went and got a lawyer and brought him,
16 and now they're trying a different tactic. So I just
17 wanted you to be aware that they're -- they really
18 don't have a leg to stand on, but they're trying
19 anything they can try.

20 Here is a letter from Clayne Tyler. Dear Ed and
21 Carole. It's probably not in your packet. Jones was
22 referring to it. This is a letter from Clayne Tyler
23 inviting Carole and I in so we could get this over with
24 because it was -- I don't know if it was tabled or
25 continued or what. And it was at his advice what we're

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1 doing tonight. It's not, like I said earlier, this
2 isn't virgin territory. Mr. Kinyon was mentioning his
3 road, and he does spend a lot of time on that road.
4 That's Elk Meadows Subdivision. They had 60-foot
5 right-of-ways interior. They had some 30 and 40-foot
6 right-of-ways on existing roads. One going up Freeman
7 Creek to the old rock pit was a 30-foot right-of-way.
8 It may be a 60 today. They have a 40-foot right-of-way
9 going through a gate and going north. This -- the Elk
10 Meadows Subdivision if you'll go into the minutes of my
11 first meeting you'll see my first statement was I asked
12 this commission if the ordinances had changed since Elk
13 Meadows was done until then -- until that night. It
14 was only a year or so. They said, no. So Clayne Tyler
15 has advised us we're under the same ordinances as Elk
16 Meadows. They got their variances. Mr. Kinyon wrote
17 as -- 18-foot road, and I will admit it wasn't built to
18 specs. You know, we let an outside developer come in
19 here from Spokane and develop 30 or 40 lots. They come
20 to this commission and set specs on everything, went
21 out there and did what they really pleased. They put
22 in no culverts. They put in no ditches. You can go
23 out there today and Elk Meadows Subdivision, and when
24 it rains hard the water runs across the road.
25 Mr. Kinyon's road, there's no ditches at all and no

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1 culverts. It's no wonder it's a maintenance nightmare.
2 But Leland Land and Cattle took their money and went to
3 Washington. I've lived here for 65 years. I'm going
4 to -- if I have any money I haven't yet, but I went to
5 the Social Security the other day and they told me I
6 was a year too soon, 65 don't work, and I didn't know
7 that. It's 66 now. So if I ever have a dollar or two
8 it will stay in Clearwater County where, you know, I've
9 paid more in real estate taxes over the last 50 years
10 than I will ever get out of this subdivision. And I
11 would, you know, ask you to ignore Garry Jones that
12 come here when their personal letter didn't work and it
13 was passed they brought a lawyer in.

14 And I would like to -- Mr. Chairman, could I
15 approach the map one more time? This is something I
16 just thought of. When I bought this I took off a
17 million feet of timber. And starting right here on out
18 I had to pay use fees to the State of Idaho. And use
19 fee -- we don't pay it anymore. At that time you paid
20 use fee on logging trucks for every mile you traveled
21 on a public road. And I thought I could argue with
22 them and get a couple of miles off. It didn't work.
23 They charged me use fee from right there when I entered
24 the public road all the way to the sawmill. And that's
25 stood -- we've logged a couple of three times out of

1 there and that is still the way it is, public road.
2 So, you know, if anybody wants to get into the
3 dedicated easements and that there's plenty of them, or
4 they want to get into Middle Road is not a public road.
5 What Mr. Jones said about these easements is true. I
6 didn't give anybody any easements. Mick Ogden, Brock,
7 Johnsons Harold and Don both before they sold it put
8 all these easements in and they did give easements on
9 the county road. I don't know the legal repercussions
10 of that. I have no idea. I have never given -- I've
11 never signed or said I give up Middle Road as a public
12 road, a county road. So I would appreciate it if you
13 would let us get on with this project. We've been held
14 up now for five years, and there is a market for it,
15 although it's considerably reduced from what it was
16 five years ago in value. We would just like -- we've
17 already went in -- when this commission passed our
18 preliminary plat and then the county commissioners
19 passed it that's as good as done, unless you come back
20 with a change. So we had no changes to make so our
21 final plat is identical to the preliminary. So when
22 the preliminary passed we went in there and put tens of
23 thousands of dollars exterior/interior roads, and then
24 all of a sudden we find, you know, we're back on trial.
25 So I certainly -- according to Bobbi and Clayne Tyler

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1 what we have presented here tonight meets all
2 requirements, and everything else is superfluous.
3 Thanks.

4 CHAIRMAN BRUCE: Commissioners, are there any
5 questions for Mr. Galloway? Mr. Woolsey? Mr. Brown?
6 No questions. That said, the hearing is now closed to
7 public comment, and is now open to debate and
8 discussion by the commission. Commission may ask
9 additional questions of all involved parties and may
10 ask for advice from ex-officio experts.

11 MS. KAUFMAN: I would like to do a reminder.
12 This hearing is for a variance request for an access
13 road, not the subdivision as a part of it. Just want
14 to be very clear, the planning and zoning commissions
15 job, they don't make the rules, they're just here to
16 help enforce the rules that have been adopted, same as
17 my job. So they're only trying to do that so don't
18 blame them for anything. They're trying to do their
19 best to see what the ordinance says and judge it on
20 that ordinance. That is our job here today. If you
21 don't like a rule you can change it, but that's what
22 we're here to do today is see if this variance meets
23 these requirements. Clayne Tyler, our legal adviser,
24 directed me on how to hold this hearing and how to
25 agenda it, so I'm doing it as how I was directed. Any

1 other questions we have we can try to answer them, but
2 as far as being a county road, my county road and
3 bridge supervisor, as far as we know Middle Road is a
4 county road. That's not up to the commission to
5 decide -- as everything we have we've been told that.
6 So just want to make everybody understand kind of our
7 position. Now the planning and zoning commission's job
8 is to judge this application based on the ordinance and
9 the testimony received, and we'll do our best. And if
10 we do have questions we'll ask you directly. We will
11 not not ask you. Do you have any questions for me,
12 Mr. Bruce?

13 CHAIRMAN BRUCE: I don't. How about the rest of
14 the commission members, do you have questions for
15 Ms. Kaufman?

16 MS. KAUFMAN: Thank you.

17 CHAIRMAN BRUCE: Thank you, Ms. Kaufman.
18 Mr. Simon, do you have any additional comments in your
19 position as ex-officio member?

20 MR. SIMON: I'll say again that as far as I am
21 concerned and everything that I've researched
22 concerning the Middle Road it is a county road. It is
23 a county road to the intersection of the proposed
24 access road. There's no question in my mind. We've
25 maintained it to a point; and, like I said, I've done

1 considerable research on that over the years, and it is
2 a county road. I live on the Middle Road, so I'm
3 pretty familiar with that also. I've lived up there
4 for 36 years. Do you, Mr. Chairman, want me to get
5 into the construction of the proposed access road at
6 this time?

7 CHAIRMAN BRUCE: All we're concerned with is the
8 variance that we establish --

9 MR. SIMON: Okay. Other than that that's all I
10 have. Any questions?

11 CHAIRMAN BRUCE: Thank you, Mr. Simon.

12 UNKNOWN PERSON: I do have a question.

13 CHAIRMAN BRUCE: Go ahead.

14 UNKNOWN PERSON: All weather, all year road or
15 seasonal road, what does that mean?

16 MR. SIMON: An all weather, all year road is a
17 road that is capable of carrying the load through all
18 seasons. If it never has to be closed due to a break
19 up, pumping of the subgrade up through the surface,
20 soft. Actually in Clearwater County right now we have
21 in the county road system, not private roads, we have
22 one all seasonal all year road, and that's the
23 Grangemont Road because we've done so much work to the
24 base. All the rest of the roads in Clearwater County
25 we have to close this time of the year because they

1 can't stand up to heavy roads.

2 CHAIRMAN BRUCE: Mr. Simon, when you say close
3 you put a weight limit.

4 MR. SIMON: Yeah, weight restriction,
5 30,000-pound gross vehicle weight.

6 UNKNOWN PERSON: Mr. Galloway said you had an all
7 year, all weather road. By definition; is that
8 correct?

9 MR. SIMON: If it's constructed correct, yes, it
10 would be with the right amount of base, the right
11 grade, the right drainage.

12 UNKNOWN PERSON: You live there is it all year,
13 all weather?

14 MR. SIMON: The way it is now, no, it isn't.
15 But -- the access road, no, it isn't an all weather
16 road.

17 UNKNOWN PERSON: And Middle Road?

18 MR. SIMON: No, it is not. We have to put a
19 weight restriction limit on that road along with all
20 the rest of the county roads.

21 UNKNOWN PERSON: So were you proposing, Mr.
22 Galloway, to make that an all weather, all year road or
23 what was -- where did that statement come from?

24 MR. GALLOWAY: An all weather road to me is one
25 you can drive on all year. You can't haul logs on it.

1 You have to put weight restrictions on any road up
2 here. The only road I've built that's all weather year
3 round is the Groseclose Subdivision when they made us
4 build it to LHTAC standards, and it's an all weather
5 year round hauling type road. The only thing is you
6 can't haul loads to get to it. So when I said year
7 around road I mean bull rocked and graveled.

8 UNKNOWN PERSON: Bull rocked and gravel and
9 you're going to be responsible for clearing it?

10 MR. GALLOWAY: I've done miles and miles of it.

11 UNKNOWN PERSON: Well, I know, but that's not
12 what I'm saying.

13 MR. GALLOWAY: That's part of my subdivision.
14 I'm going to build an all weather road not -- you know,
15 I'm going to build a road you can get cars and pickups
16 in year round, not logging trucks. Those specs are
17 just unachievable. There will be a road to that
18 subdivision that's bull rocked and graveled. Every
19 subdivision I've ever done is year round road in that
20 definition of rock and gravel.

21 UNKNOWN PERSON: I think one of the reasons for
22 the county ordinances is to provide -- I'm sure it's
23 still involved in being improved is to provide
24 emergency services for people that live in the county
25 and fire protection.

1 UNKNOWN PERSON: Well, that -- in that point of
2 discussion, though, every road, just like Mr. Simon
3 said, every road except Grangemont Road falls under the
4 weight limitations this time of year; and yet that
5 doesn't stop people from running fire trucks on it or
6 emergency response vehicles or --

7 MS. KAUFMAN: They're exempt.

8 UNKNOWN PERSON: -- as a matter of fact hauling
9 livestock and food for livestock is allowed.

10 UNKNOWN PERSON: Right. (Inaudible) is to --

11 MR. GALLOWAY: Can I continue my answer?

12 CHAIRMAN BRUCE: Yeah, go ahead.

13 MR. GALLOWAY: That bottleneck that we were
14 talking about, the county prosecuting attorney, the
15 ambulance service and the volunteer fire department
16 said that 15-foot bottleneck would not affect them at
17 all because the site distance is so far. You can see
18 way on both sides of it. And it's not peculiar to this
19 subdivision. There's even a county road over on Tomho
20 on Dent where private property comes out in the middle
21 of the county road. So there's actual county roads
22 with these bottlenecks. So, you know, that's why they
23 suggested I go for a variance on this because nobody
24 could find any way it adversely affected (inaudible.)

25 UNKNOWN PERSON: (Inaudible) the fire code

1 provides for security gates width (inaudible) narrower
2 than the road requirements.

3 CHAIRMAN BRUCE: Any other questions?

4 UNKNOWN PERSON: No.

5 CHAIRMAN BRUCE: Let's start -- let's go around
6 the loop. Mr. Woolsey?

7 MR. WOOLSEY: Get back to me.

8 CHAIRMAN BRUCE: Okay. Start on this side,
9 Mr. Steiner?

10 MR. STEINER: (Inaudible.)

11 CHAIRMAN BRUCE: Mr. Eikum?

12 MR. EIKUM: There was just way too many things
13 wrong with this that I can't support it. We have
14 easement problems. We have road width problems. We
15 have private property. We have maintenance problems.
16 We have possible -- let me say possible problems. You
17 know, you need to adhere to the spirit of the
18 ordinance, and it doesn't in at least three different
19 places, and that's why they are requesting a variance.
20 And, yes, we have done things in the past one at a time
21 usually on a variance, not three things in one. I hate
22 to compare anything to something that we have done
23 previously because this has to stand alone. This is
24 its own -- this variance would be just strictly for
25 this situation. Even the definition of variance, undo

1 hardship because of the characteristics of the site. I
2 don't see undo hardship because of the characteristics
3 of the site. The hardship is you put the cart before
4 the horse, and you don't have the easements to develop
5 a subdivision, which the subdivision looks fine in and
6 of itself. It's this access road that just doesn't
7 meet standards, and that's why we're here tonight. I
8 thought Mr. Kinyon brought up some good points. I've
9 noticed the same thing out at Dent. There's
10 subdivisions out there that are supposed to have 24 --
11 one in particular supposed to have a 24-foot road base,
12 and there's -- I measured with a tape measure myself.
13 There's places where it's only 14, 15, 16-feet. You
14 know, it happens. I don't think it should, but it
15 does. And I've researched this for almost two months
16 now off and on different parts of it. I've got my own
17 copy of the grant of easements. I went to the
18 auditor's office, and I've highlighted on my own pretty
19 much everything Mr. Jones brought up about the
20 problems. I've got my own highlights here exactly what
21 he said. It's not -- the access road for the easements
22 from Ogden drops into Johnsons specifically says it's
23 not to be deemed a public right-of-way. Well, you put
24 in a class B subdivision with 10 parcels, how are you
25 going to keep that a private road? You said yourself

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1 you want excavators up there. You want cement trucks
2 and builders and frames and building inspectors and
3 Tripco is going to be up there and Builders Supply. If
4 you list it with somebody you're going to have a
5 Realtor bringing people -- this is going to be a public
6 right-of-way. And the grantors of the easement did not
7 want this to be a public right-of-way. I know this is
8 in name only, but I do not support --

9 CHAIRMAN BRUCE: You're disagreeing with the
10 explanation Mr. Golding gave us on allowing access?

11 UNKNOWN PERSON: Nonexclusive.

12 MR. EIKUM: The nonexclusive.

13 UNKNOWN PERSON: It's a nonexclusive
14 right-of-way.

15 UNKNOWN PERSON: Well, I guess we're splitting
16 hairs over the definition of a public right-of-way.

17 CHAIRMAN BRUCE: Well, a public right-of-way
18 according to Mr. Tyler in this letter that Mr. Jones
19 referred to -- he was identifying the difference
20 between -- one of the things between a public
21 right-of-way and a private road. And the difference
22 primarily as we talked in conversation was that you can
23 gate a private road. You can't gate a public road.
24 But when you come back to the county in their
25 jurisdiction, can the county establish standards for

1 the private road? Yes, the county can establish
2 standards just like they do establish standards for a
3 house on how you are going to build it through the
4 building code. It's a private house, but you have to
5 adhere to a building code standard when you're
6 building. That's the way our county is. And so the
7 same thing with the road, whether it's private or
8 public, the county prescribes the standards as to what
9 that -- how that road will be built.

10 MR. EIKUM: I agree, and we've done that, and
11 this doesn't meet the standards, plain and simple.

12 CHAIRMAN BRUCE: What are you saying it doesn't
13 meet the standards? I don't --

14 MR. EIKUM: It does not have the 60-foot
15 easement.

16 CHAIRMAN BRUCE: He's asking for a variance.

17 MR. EIKUM: That's what I'm saying.

18 CHAIRMAN BRUCE: What about the standards as far
19 as what kind of base will be laid down and the bedrock
20 and the gravel and so on?

21 UNKNOWN PERSON: What about it?

22 UNKNOWN PERSON: I think what he's trying to say
23 is that we have -- basically that road is designed
24 where, you know, like you were talking about your cut
25 banks and stuff, well, it's going through a field. So

1 what he's saying is that road to maintain what it needs
2 to have access for, for ambulances and stuff, does not
3 need to be as wide to be sufficient basically.

4 UNKNOWN PERSON: Mr. Chairman, can I make a
5 statement?

6 CHAIRMAN BRUCE: No. We've closed public
7 comment. Only if you're asked a question. Mr. Nation?

8 MR. NATION: I'm satisfied with what I heard. I
9 don't need to -- I don't have any questions.

10 CHAIRMAN BRUCE: Mr. Riccomini?

11 MR. RICCOMINI: I'm satisfied with what I heard.

12 CHAIRMAN BRUCE: Mr. Brown?

13 MR. BROWN: I don't have anything.

14 CHAIRMAN BRUCE: Mr. Woolsey, we're back to you.

15 MR. WOOLSEY: I'll ask Mr. Galloway's input real
16 quickly on the point he wanted to make.

17 CHAIRMAN BRUCE: Sure.

18 MR. GALLOWAY: The point I want to make is we're
19 doing this right, 10 houses. If we're forced to sell
20 out in 20s there could be 60 houses no -- no road specs
21 or nothing. We could just go in there and sell 20s and
22 they could just mud bog it. We're trying to do it
23 right. We're trying to do a quality subdivision with
24 10 houses. If we sell it in 20s I'll guarantee you
25 there will be single-wide trailers and junkyards and

1 everything that you see around Clearwater County. And
2 maybe if I could back up, I would have done it in 20s
3 and got rid of all this. But we've put a lot of money
4 and effort into doing a subdivision right according to
5 our comp plan, and that's it.

6 CHAIRMAN BRUCE: Does that answer your question,
7 Mr. Woolsey?

8 MR. WOOLSEY: Yeah. I'm still struggling with
9 the easement question because I understand what
10 Mr. Golding is saying this seems correct and, you know,
11 the documents that we've been given the one that Mr.
12 Jones presented and everything also goes in there and
13 specifies that it's a nonexclusive. In fact, I
14 wouldn't mind asking Mr. Jones if he has a follow-up on
15 that particular phrase in light of the easement
16 documents. The nonexclusivity of the --

17 MR. JONES: At the risk of showing that I don't
18 know what I'm talking about, I would interpret a
19 nonexclusive easement meaning that the person who gave
20 the easement has a right to grant the easement to other
21 people. So that a grantor -- it's nonexclusive from
22 the standpoint of the grantor giving the easement. He
23 can give that to other people. As to the grantees I
24 don't believe what's been said is correct. But I can't
25 make that representation to you in a 100 percent

1 statement. I believe it's incorrect, but I believe
2 nonexclusive just means that the grantor can give it
3 again. It doesn't mean that the grantee can give it as
4 many times as he wants to. And I could be wrong about
5 that, I'll admit that.

6 UNKNOWN PERSON: So I don't know.

7 MR. JONES: Nor do I. I'm comfortable with that
8 but (inaudible) later on.

9 MR. GALLOWAY: Mr. Chairman, I could add a bit to
10 that if I was so directed.

11 CHAIRMAN BRUCE: We're closed for public comment.

12 UNKNOWN PERSON: I've got a question for the road
13 expert.

14 CHAIRMAN BRUCE: Go ahead.

15 UNKNOWN PERSON: Who or maybe it's through the
16 county, whose responsibility is it to see that this
17 access road is built to a specific standard?

18 MR. SIMON: Mine.

19 UNKNOWN PERSON: And that process hasn't started
20 yet (inaudible.)

21 MR. SIMON: I've looked at it. I've walked it
22 three, four years ago, and that's where I came up with
23 some of my suggestions of what I would like to have
24 seen done on that road to bring it up to a better
25 standard, but it's certainly not finished. And then I

1 use LHTAC standards, Local Highway Technical Assistance
2 Council adopted by the county, and I use those
3 standards for road construction, drainage, grade uses,
4 grade widths, base material, type of material. So
5 that's -- but it is -- it's up to me to make sure that
6 the road is constructed (inaudible.)

7 UNKNOWN PERSON: Now I have a question for
8 Mr. Rausch (sic.)

9 MS. KAUFMAN: You mean Mr. Bruce?

10 (Unintelligible discussion.)

11 UNKNOWN PERSON: Mr. Bruce. When the road meets
12 the standard is that when building permits are issued
13 or is there some sequence in that process that --

14 CHAIRMAN BRUCE: Ms. Kaufman?

15 UNKNOWN PERSON: When do building permits get
16 issued after the road is finished and who certifies the
17 road?

18 MS. KAUFMAN: When you come to get a building
19 permit there is no speculations on if there's even a
20 road to your place. That's not in our process right
21 now.

22 UNKNOWN PERSON: So we have all these standards,
23 but we don't have the tools to enforce them?

24 MS. KAUFMAN: If there was a condition set then
25 you could. Like we make sure that there's a septic

1 permit first, and most likely if you're going to get
2 all that you're going to have a road. But we, the
3 county, does not have any jurisdiction over a private
4 driveway. There might be an access road, but the
5 driveway to the house we don't.

6 UNKNOWN PERSON: Well, we have a standard for
7 roads, the access road.

8 MS. KAUFMAN: Correct.

9 UNKNOWN PERSON: And the standard is being --
10 we're asking for a variance. There's a variance being
11 asked for for this road.

12 MS. KAUFMAN: Correct. You can add stipulations
13 to this subdivision. You could -- because it's a plat
14 you can be on the title work if you feel the need to
15 let people know. There's been some done in the past.
16 But as far as right now for anybody getting the
17 building permit it is not a requirement under the
18 building code, the International Code or the County's
19 Code, that I even ask that you have a road to your
20 house. I have to make sure that there's an approved
21 septic. But you as a planning and zoning member can
22 add conditions. You can amend the motion. You can do
23 certain things. You can require additional information
24 from the applicant, or whatever you need be that you
25 feel comfortable.

1 CHAIRMAN BRUCE: Let me talk about a preliminary
2 plat and put this into perspective. A preliminary plat
3 is (inaudible) other than the survey, which sets the
4 pens, there's nothing else that has to go on out there
5 until such time as that goes -- that we make a
6 recommendation of the final plat to the board. Now the
7 board can lay on the conditions as to --

8 UNKNOWN PERSON: You're talking about
9 supervisors?

10 MS. KAUFMAN: The board of county commissioners.

11 CHAIRMAN BRUCE: The board of county
12 commissioners.

13 UNKNOWN PERSON: Okay.

14 CHAIRMAN BRUCE: The variance is the only thing
15 that we have the power to approve. That's what we're
16 hearing right now is the variance application. As far
17 as the subdivision everything about that is a
18 recommendation from us. So we go through the
19 preliminary plat stage, excuse me, we do have the
20 approval authority over preliminary plat. Then we
21 recommend final plat to the board of county
22 commissioners, and they're the ones that can lay on the
23 conditions as to how that's implemented. That's where
24 your enforcement -- Mr. Simon works for them.
25 Mr. Simon goes out there and does an inspection to see

1 whether the road meets the criteria, and he would be
2 doing that on behalf of the board of county
3 commissioners.

4 UNKNOWN PERSON: And that will happen at some
5 time?

6 CHAIRMAN BRUCE: Uh-huh (affirmative.)

7 MS. KAUFMAN: And he has to sign off on the plat.

8 UNKNOWN PERSON: That answered my question
9 because I wanted to know where this process is going
10 once we say something (inaudible) turkey trail or not.

11 CHAIRMAN BRUCE: Mr. Riccomini, you had a
12 question?

13 MR. RICCOMINI: They answered it. Thank you.

14 CHAIRMAN BRUCE: Okay.

15 MR. WOOLSEY: I had one more question of
16 Mr. Simon.

17 CHAIRMAN BRUCE: Certainly. Go ahead, Mr..
18 Woolsey.

19 MR. WOOLSEY: Rob, how wide is Middle Road
20 through there from --

21 MR. SIMON: The driving surface is probably
22 12-feet average.

23 MR. WOOLSEY: See, that's the discussion that we
24 have a lot of times because they want to put more
25 expansive requirements on the developer than what is

1 maintained on the -- so you've got a skinny road that
2 goes to a wide road --

3 CHAIRMAN BRUCE: Exactly.

4 MR. WOOLSEY: -- in the middle of nowhere, and
5 that's why we've been willing to reduce them to the
6 18-foot driving widths is because they're coming off of
7 roads that are much narrower for sometimes a long time.

8 CHAIRMAN BRUCE: But we don't want to do that for
9 down the road because (inaudible.) In a perfect world
10 we want to upgrade every road in the county so we don't
11 want to keep continuing to making substandard roads.

12 UNKNOWN PERSON: Right.

13 UNKNOWN PERSON: (Inaudible.)

14 UNKNOWN PERSON: Chicken and egg problem there
15 with each one that shows up.

16 UNKNOWN PERSON: Uh-huh (affirmative.)

17 CHAIRMAN BRUCE: On this 20-acre business I would
18 like to explain that, too. Mr. Galloway was talking
19 about the 20-acre option. Well, the only applications
20 for subdivision that we hear are subdivisions that have
21 at least one lot that's less than 20 acres. If you
22 make a subdivision with all your lots of 20 acres or
23 greater, you don't have to come to the county for
24 permission, just go out and do it. You set up your own
25 road plan and subdivide the property at 20 acres. Now,

1 I don't know whether that's good or bad. I'm not going
2 to make a judgment on that, but that's a fact of life.
3 And so what he has done -- and I'll grant this to him
4 is that he has attempted to meet the letter of the law
5 (inaudible) full-platted process. Where we're
6 scrutinizing every detail of the subdivision. Does
7 that make sense? Do you have a question about that?

8 UNKNOWN PERSON: (Inaudible) I just want to make
9 sure that if I make a decision that, you know,
10 (inaudible) some meaning (inaudible.)

11 CHAIRMAN BRUCE: Yeah, I appreciate that. But I
12 wanted you to understand the difference between the
13 20-acre thing, and when you're making a subdivision
14 that turns into (inaudible.)

15 UNKNOWN PERSON: Yeah, virtually no restrictions.

16 CHAIRMAN BRUCE: Exactly.

17 MS. KAUFMAN: Right. And something else, if you
18 look in your staff report I itemize out what the
19 ordinance says. We are not basing this off of the comp
20 plan. We are basing it off of the subdivision
21 ordinance, and the ordinance specifically says certain
22 rules for a variance to be granted. It's under Article
23 8 of the Subdivision Ordinance; and it says, no
24 variance as herein defined shall be verily acted upon
25 by the commission unless there is a finding as a result

1 of a public hearing that the following exists: That
2 there are such special circumstances or conditions
3 affecting the property that the strict application of
4 the provisions of this ordinance would be clearly be
5 impracticable or unreasonable and cause an undo
6 hardship. In such cases the developer shall first
7 state his reason in writing as he (inaudible) specific
8 provisions for requirements involved, which he did.
9 Number two, that strict compliance with the
10 requirements of the ordinance would result in
11 extraordinary topography or such conditions would
12 result in inhibiting the achievement of the objectives
13 of the ordinance; that the granting of specific
14 variance would not be detrimental to the public,
15 welfare or injurious to other property in the area in
16 which the property is situated; that such variance
17 would not violate the provisions of Idaho Code; that
18 the variance will not have an effect of nullifying the
19 interest of purpose of this ordinance and the
20 comprehensive plan. That is what we're judging this
21 application off of. If we need more information or
22 don't have enough we can request that, but I just want
23 to make sure that we are clear on what we are judging
24 this specific application on within these provisions.

25 CHAIRMAN BRUCE: Any further comments,

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1 Mr. Steiner? Mr. Ketchum? Mr. Eikum?

2 MR. EIKUM: I recall at the November 17th, 2008

3 public hearing Mr. Galloway did say that he would

4 consider putting in 20s and several of the opposing

5 neighbors at that time said, yeah, great, go ahead.

6 CHAIRMAN BRUCE: At this point we're dealing with

7 the variance request. The subdivision plat preliminary

8 was already approved. So we need to concentrate on the

9 variance when we're thinking about this. Mr. Nation?

10 MR. NATION: Nothing.

11 CHAIRMAN BRUCE: Mr. Riccomini?

12 MR. RICCOMINI: No.

13 CHAIRMAN BRUCE: Mr. Woolsey, do you have

14 anything?

15 MR. WOOLSEY: We have to address the variances

16 all three parts up or down, or can we (inaudible) for

17 ones that are okay with (inaudible) or not.

18 CHAIRMAN BRUCE: Want to divide the vote?

19 MR. WOOLSEY: Well, I'm asking you procedurally

20 first if it's in one package yes or --

21 CHAIRMAN BRUCE: Well, it was presented as an

22 application including all three items.

23 MS. KAUFMAN: He can amend my motion.

24 CHAIRMAN BRUCE: That's how we introduced it.

25 How's that?

1 MS. KAUFMAN: He can amend it.

2 CHAIRMAN BRUCE: You could, yes, that's one thing
3 you can do. You could amend by motion that we delete
4 one of those items.

5 MR. WOOLSEY: I guess the one that I have issue
6 with is the third one that set aside the requirement to
7 dedicate the access road to public use, because I don't
8 know that I've been convinced that the easements that
9 are there would allow that to be dedicated based on the
10 county prosecutor's letter. And I don't know if we can
11 get clarification on that.

12 MS. KAUFMAN: Did you see in the findings the new
13 example that I was sent by Clayne explaining that?

14 MR. WOOLSEY: Yeah. It seems to me that he's
15 telling --

16 MS. KAUFMAN: (Inaudible) that you can't dedicate
17 it that (inaudible.)

18 MR. WOOLSEY: He's saying that we don't -- that
19 there's not the right to make that a dedicated --

20 MS. KAUFMAN: That Galloway wouldn't have legal
21 right to dedicate Shinn's property to public use. He
22 only has an easement.

23 MR. WOOLSEY: Which is Item 7 here in your
24 findings, right?

25 MS. KAUFMAN: Yes, yes.

1 MR. WOOLSEY: That's the way I read it, too.

2 CHAIRMAN BRUCE: So what are you stating?

3 MR. WOOLSEY: Well, I mean, in a nutshell the
4 changing of the right-of-way from 60 to 30, you know, I
5 don't have any problem with that. You know, that's
6 adequate for access through there. The change from the
7 surface from 24 to 18 I would prefer not to, but that
8 doesn't give me a huge amount of heartburn either. But
9 the -- to set aside the requirement for dedicating
10 road, I guess, we're just -- what you're asking us is
11 to turn a blind eye to that whole ordinance that we
12 have to have dedicated.

13 CHAIRMAN BRUCE: It's an old rule. It goes way
14 back, and it was primarily designed for like
15 (inaudible) now it's in a rural environment so it is
16 just a procedure that has to be done.

17 MR. WOOLSEY: Right. But, yeah, so we're either
18 scratching -- we're basically jury nullification, for
19 lack of a better word, we're ignoring that whole
20 concept and just wanting to throw away by setting aside
21 the requirement is what they're asking us to do.

22 CHAIRMAN BRUCE: You have to think about what's
23 applicable to town and what's applicable to a rural
24 subdivision. We have to kind of go out of the box a
25 little bit.

1 MR. WOOLSEY: Generally what we encounter is
2 every subdivision has got pretty much direct access to
3 some form of a county road or other, and this one is a
4 bit. There are others. It's not the only one like Mr.
5 Galloway said, and he's correct. It's not the only one
6 that's remote from -- that has to pass across land, but
7 most of those ones we have we're not running into
8 opposition from the landowner but they're crossing it.

9 MS. KAUFMAN: And this is just (inaudible) access
10 road the interior roads could be dedicated public.

11 MR. WOOLSEY: Right, right.

12 MS. KAUFMAN: Yeah.

13 MR. WOOLSEY: But I'm saying the difference from
14 this one that they're asking us to set it aside from
15 some of the other ones we've done. In some of the
16 other ones the roads are longer and they're through
17 private property, but the property that we were
18 crossing wasn't throwing a fit about having it crossed.
19 They were okay with having it -- subdivision access
20 through that existing easement, where this it's
21 obviously not the case.

22 CHAIRMAN BRUCE: Mr. Simon, do you have a comment
23 on this?

24 MR. SIMON: No, I don't.

25 MR. WOOLSEY: Anyway, so, you know, don't want to

1 stomp on the rights of a guy that wants to develop his
2 property. You know, I think people should be allowed
3 to do what they want to with theirs, but on the same
4 hand -- or on the other side of that coin is, you know,
5 who's -- when the owners that's land is being crossed
6 doesn't want it to happen, then you're granting one
7 person rights at the expense of another one, and that
8 one causes heartburn. I don't know. I'd like to do
9 (inaudible,) but I don't think that's an option.

10 UNKNOWN PERSON: Nope.

11 CHAIRMAN BRUCE: Nope. Mr. Galloway has the
12 easement, and according to the -- if I'm reading
13 correctly as to what Mr. Tyler advises to this wouldn't
14 meet the criteria of a road that you could dedicate to
15 public use.

16 UNKNOWN PERSON: (Inaudible.)

17 MR. WOOLSEY: Right, and that's what I understood
18 his comments say here, too, that it -- yes, it won't
19 work to be dedicated to the public so we're creating a
20 subdivision with no dedicated public access by ignoring
21 the public access rule. Is that it in a nutshell?

22 UNKNOWN PERSON: That's what a variance is for.

23 UNKNOWN PERSON: We'll have access. Access to be
24 built to the standard (inaudible.)

25 UNKNOWN PERSON: That's what a variance is for.

1 UNKNOWN PERSON: Right, it will have access.
2 UNKNOWN PERSON: And (inaudible) standards
3 enforced by the county.
4 UNKNOWN PERSON: Is that the negative way of
5 looking at it? Because there could be a positive way
6 of looking at it that supposedly cut back on traffic;
7 is that correct?
8 MS. KAUFMAN: Yes.
9 UNKNOWN PERSON: Does it give (inaudible) no
10 trespassing sign out there is kind of what we're
11 getting at.
12 UNKNOWN PERSON: You can gate it. You can gate
13 the private one.
14 MR. WOOLSEY: So I guess there's a negative way
15 of looking at it and a --
16 UNKNOWN PERSON: And a positive.
17 MR. WOOLSEY: So I can kind of see where they
18 come up with the idea. It does make sense.
19 CHAIRMAN BRUCE: Okay. The commission may amend
20 the motion as necessary (inaudible) or may send for a
21 committee review. Is there any motions to amend?
22 There's no further debate or discussion the Chair puts
23 the motion to a vote. The question is: Shall the
24 commission approve -- do you have that motion, Ms.
25 Kaufman? The question is: Shall the commission

1 approve ZV2011-2, a variance request by Ed and Carole
2 Galloway. Those in favor say aye.

3 (Aye in Unison.)

4 CHAIRMAN BRUCE: Let's have a hand count. Those
5 opposed say no.

6 (No in Unison.)

7 CHAIRMAN BRUCE: Did you record the vote,
8 Ms. Norris? Result of the vote was that the commission
9 approved this variance request. Thank you for
10 everybody that participated and you brought testimony
11 before us, and you also have the option to appeal our
12 decision. The appeal authority for variances is the
13 board of county commissioners. So if you lodge an
14 appeal you'll have to bring that before the -- are
15 there any questions on how we've handled this hearing?
16 Any questions on what goes on afterwards? Mr. Shinn?

17 MR. SHINN: So the appeal process would be
18 directly to the county commissioners?

19 CHAIRMAN BRUCE: Yes, sir, that's correct.

20 MR. SHINN: And Ms. Galloway is a county
21 commissioner.

22 MS. KAUFMAN: She would recuse herself.

23 CHAIRMAN BRUCE: Well, she's a county
24 commissioner, but there's a process for her to recuse
25 herself.

1 MR. SHINN: I see. So that would, then -- there
2 would be two county commissioners?

3 CHAIRMAN BRUCE: To the best of my knowledge.
4 There's three and if she recuses herself that would be
5 two. Any questions from anybody else? The hearing for
6 agenda Item ZV2011-2 is now closed. With that said,
7 there's no objection, we'll recess for five minutes and
8 start at 20 after the hour. Thank you for attending.

9 (Hearing concluded at 9:16 p.m.)

10 - - - - -

11 (Reconvened at 9:24 p.m.)

12 CHAIRMAN BRUCE: Ready for agenda Item No.
13 SUB060096, the request of the final plat stage of a
14 Class B subdivision by Ed and Carole Galloway is now
15 reopened. The applicants are present. Today's hearing
16 is a continuation of a final plat application presented
17 to this commission on 17 November, 2008. The
18 application follows the platting procedures for a Class
19 B subdivision for the purpose of establishing South
20 Fork Estates, which was previously referred to as
21 Hidden Valley Subdivision. Specifically the request is
22 to divide 99.82 acres into 10 parcels, which will range
23 between 6.67 and 13.14 acres each. The property is
24 zoned F1, which is below density rural districts. The
25 property is located in Section 9, Township 37 north and

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1 Range 1 east in the Freeman Creek Road area off of
2 Middle Road, Clearwater County, Idaho. The property is
3 not within an area of city impact. The commission
4 approved the preliminary plat with conditions at the
5 November 20, 2006, planning and zoning meeting. During
6 today's meeting the commission conducted a hearing to
7 hear a variance request for access road to the proposed
8 subdivision. Ms. Administrator, when we address those
9 findings in this hearing's dialogue please briefly
10 summarize the preliminary plat conditions and those
11 conditions that apply to the access road. The
12 commission may by majority vote recommend approval,
13 recommend disapproval or postpone a decision until a
14 new public hearing shall be called on the application.
15 The Chair requests that Ms. Administrator present a
16 motion for agenda Item SUB060096.

17 MS. KAUFMAN: I move that the commission
18 recommend approval for SUB060096, a Class B subdivision
19 named South Fork Estates requested by Ed and Carole
20 Galloway.

21 CHAIRMAN BRUCE: Is there a second to the motion?

22 MR. BROWN: Second.

23 CHAIRMAN BRUCE: For the record Mr. Brown
24 seconds. Are there members of the commission who wish
25 to declare a conflict of interest? Ms. Administrator,

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1 do you have additions to the staff findings?

2 MS. KAUFMAN: I do. Variance request ZV2011-2
3 was approved at the March 21st, 2011, planning and
4 zoning hearing. And also as a condition of the
5 preliminary plat was to get the road names approved,
6 and the Clearwater County Road Addressing Department
7 approved access roads to be named Summer Range Drive
8 and Wildrose Court.

9 CHAIRMAN BRUCE: Thank you, Ms. Administrator.
10 The motion has been made and seconded. The question
11 is: Shall the commission recommend approval of the
12 main motion as presented by planning and zoning
13 administrator? The hearing is now open to public
14 comment. Those who testify must come forward and state
15 their name and address for the record. Does the
16 applicant have testimony to clarify or support their
17 application? The Chair recommends then you present
18 testimony.

19 MR. GALLOWAY: Well, since this commission has
20 the full authority to grant variances, and you just did
21 grant variances, the subdivision does not vary at all
22 from the preliminary plat. So one thing I would like
23 to clarify, the roads are not to LHTAC standards, and
24 they won't be. This subdivision predates LHTAC
25 standards in Clearwater County, and that's been

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1 verified by the prosecuting attorney that he said I'm
2 under the rules. I'm under the rules that were in
3 place when I applied for this. That doesn't mean it
4 won't be a year round road, just LHTAC standards are
5 observed. LHTAC standards -- I have a book right here.
6 LHTAC standards brings a road up to specs to be paved.
7 And one way to kill a subdivision is do LHTAC
8 standards. We did a subdivision not far from here to
9 LHTAC standards. Somebody was talking about it
10 tonight, maybe Rob. The road is 40 bucks a foot. If
11 you want to kill a subdivision just go LHTAC standards
12 that will kill all the subdividing in Clearwater County
13 because these people that put in an LHTAC standard road
14 can now not sell their land for enough money to get
15 their investment back. This subdividing isn't the big
16 millionaire maker that people think. There is really
17 close tolerances here. So I'm -- I will be putting in
18 an 18-foot wide road. I generally put four to six
19 inches base material, which is bull rock, mainly
20 because my bull rock runs 3 or 4-inches, and I'll be
21 putting on about 3 inches of three-quarter minus on top
22 of that, which we -- just a little ways from here we
23 built 1.86 miles of road to these exact specs, and
24 they're a good solid year round road. Once again, not
25 for logging trucks or trucks. We don't haul on these

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1 roads in the springtime when they're weight
2 restrictions, that's pretty common knowledge in
3 Clearwater County. So you can ask me some questions,
4 but I wanted to bring that up; that the road will be a
5 year round road, bull rocked and graveled, but it won't
6 be LHTAC standards. LHTAC standards calls for
7 12-inches a pace and that's observed. 12-inches of
8 base is -- you know, they didn't even put that under
9 the pavement on Freeman Creek Road, and that's a state
10 spec road there. These LHTAC standards, like I said,
11 they prep a road for asphalt.

12 CHAIRMAN BRUCE: Any questions for Mr. Galloway?

13 MR. GALLOWAY: It will be fully surveyed. Terry
14 has already done all the surveying. All he has to do
15 is set the pens in the middle of the road when the road
16 is complete. Somebody asked Rob how we would know if
17 the road was to specs. Rob has to sign the final plat
18 mylars before they're recorded. So Rob has to sign
19 them. Andy has to sign them from the Health
20 Department. Engineers have to sign them. The Chairman
21 of that County Commissioners has to sign them. Who
22 else, Bobbi?

23 MS. KAUFMAN: TJ has to sign them.

24 MR. GALLOWAY: TJ has to sign them. So if
25 anything sneaks through it wouldn't be my fault. So

1 I'm open to questions.

2 MR. KETCHUM: Where did LHTAC come from?

3 MR. GALLOWAY: LHTAC, that's what I'd like to
4 know.

5 MR. KETCHUM: Did I read it somewhere?

6 MS. KAUFMAN: No.

7 UNKNOWN PERSON: LHTAC means Local Highway
8 Technical Advisory Council, and they advise different
9 highway jurisdictions.

10 MR. GALLOWAY: We use LHTAC standards commonly
11 for approaches.

12 MR. KETCHUM: What I'm getting at is did we ask
13 for that? Did somebody ask for that? Why are we
14 discussing it?

15 MR. GALLOWAY: Rob says we've adopted them.
16 Clayne Tyler says we have not.

17 UNKNOWN PERSON: Bobbi, we've adopted them as of
18 this last --

19 MR. GALLOWAY: I haven't heard of a public
20 hearing.

21 MS. KAUFMAN: I know the approaches.

22 MR. GALLOWAY: The approaches, yeah.

23 CHAIRMAN BRUCE: To answer your question, Mr.
24 Ketchum, I think -- I guess the point that he's drawn
25 is he's under an old set of rules. If we did the same

1 subdivision today we would apply the LHTAC standards
2 that's been adopted by the county.

3 UNKNOWN PERSON: Okay, yeah.

4 MR. GALLOWAY: Other than that there will be
5 underground power going in. I don't know what else you
6 would want to know. As far as passing the final
7 subdivision, the criteria is does it meet the
8 requirements of the zoning, and it obviously does
9 because we just fixed it.

10 CHAIRMAN BRUCE: Thank you, Mr. Galloway. Is
11 there testimony from citizens supporting the motion?
12 Is there testimony from citizens opposing the motion?
13 State your name and address for the record, please.

14 MR. JONES: My name is Garry Jones. I'm an
15 attorney. I represent Mr. and Mrs. Shinn. My office
16 is 1304 Idaho Street in Lewiston. The only opposition
17 that I would have is that as announced by Chairman
18 Bruce at the end of the last meeting we do have a
19 right -- I don't know if we're going to do that -- to
20 appeal the decision on the variances. It seems to me
21 that it's premature to vote on the final plat before
22 we've exhausted our rights to appeal on the variances,
23 and I would respectfully request that you table this
24 motion until such time as we've had an opportunity to
25 proceed through our administrative remedies.

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1 CHAIRMAN BRUCE: Thank you for your comments.
2 Are there any questions for Mr. Jones? Are there any
3 other citizens who oppose the motion?
4 Ms. Administrator, do you have written correspondence?
5 MS. KAUFMAN: I do. Again, we got a letter from
6 Sam Charles, Ponderosa Area Manager Idaho Department of
7 Lands. Again, based on the documentation I provided
8 the development will not impact state trust lands at
9 this time so they had no comments.
10 CHAIRMAN BRUCE: Thank you. Is there any other
11 testimony especially (inaudible.) The applicant may
12 rebut any and all testimony.
13 MR. GALLOWAY: I guess we only have one. My
14 rebuttal on that is this was filed in 2006. It is time
15 to move on. Any action here, I believe, would be civil
16 action, and it wouldn't -- according to what I'm told,
17 Bobbi, you know more on this than I do, the final
18 decision on the variances is right here.
19 MS. KAUFMAN: Correct, but anybody has the right
20 to appeal. They have 30 days. We are not the deciding
21 factor on the final plat; therefore, there would be
22 time -- they file an appeal the board of county
23 commissioners would not be able to hear the final plat
24 yet. And I actually asked Clayne Tyler this question,
25 and he said to hear both of them that they would still

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1 have time to appeal it because once they appeal it it
2 would halt this application from going further until
3 that appeal process is -- their time has been --

4 MR. GALLOWAY: So we can get this out of here
5 tonight.

6 MS. KAUFMAN: The planning and zoning commission
7 because they are not the final decision-maker on the
8 final plat they give a recommendation to the board of
9 county commissioners, yes.

10 CHAIRMAN BRUCE: Yeah, that's true.

11 MR. GALLOWAY: So if there's an appeal it would
12 be brought up next Monday at the county --

13 MS. KAUFMAN: Well, it's whoever would apply for
14 one. If somebody wants to appeal it they have to
15 contact -- they can contact either me or the board of
16 county commissioners to start that process.

17 MR. GALLOWAY: Okay. I would just like to see
18 this passed out of here tonight, and we can get on
19 with -- if there's an appeal we'll handle it where it
20 needs to be. It doesn't need to be handled here, in my
21 opinion.

22 CHAIRMAN BRUCE: Thank you for your opinion. Are
23 there any other comments? The hearing is now closed to
24 public comment and is now open to debate and discussion
25 by the commission. The commission may ask additional

1 questions of all involved parties and ask for advice
2 from ex-officio experts. Mr. Helkey?

3 MR. HELKEY: Andy Helkey, Wells Bench Road,
4 Public Health Idaho North Central District. I reviewed
5 test holes on every lot in this subdivision back in
6 2008. All lots do have a suitable size, soil depth and
7 type to allow (inaudible.) Any questions?

8 CHAIRMAN BRUCE: Any questions for Mr. Helkey?
9 Thank you for your testimony, Mr. Helkey. Mr. Simon,
10 did you have any comments?

11 MR. SIMON: I have not looked at these roads in
12 the subdivision, and I intend on looking at them before
13 I sign my log. Now, I just got a bit of a curveball
14 thrown at me right now. I was assuming that the
15 planning and zoning commission adopted LHTAC standards
16 for road construction, and I've always based that as
17 my -- those standards as my baseline when I look at a
18 road. So, like I said, I have not looked at these
19 roads so I would like to hold any comment until I
20 see -- until I look at them, and I'm assuming that
21 they're not finished.

22 UNKNOWN PERSON: (Inaudible.) Well, we did
23 excavation interior (inaudible.)

24 MR. SIMON: So there's nothing for me to inspect
25 there yet other than possible grade, site distance,

1 drainage as far as the road construction base and
2 surface there's nothing there yet. I haven't seen it.

3 CHAIRMAN BRUCE: Any questions for Mr. Simon?

4 UNKNOWN PERSON: I do. I have a question. What
5 were the grade standards before the LHTAC came into the
6 picture?

7 MR. SIMON: Okay. Now, correct me if I'm wrong,
8 TJ, but the county did have some basic standards for
9 road construction like grade, and it was not to exceed
10 10 percent.

11 MS. KAUFMAN: Correct.

12 UNKNOWN PERSON: (Inaudible) that's in the
13 subdivision ordinance.

14 MR. SIMON: In a subdivision ordinance, okay. So
15 I would assume that in any road that is built in
16 Clearwater County it's 10 percent maximum. Now,
17 there's always this little clause in the bottom even
18 with LHTAC standards. There's always this little
19 clause in the bottom it can be changed under the
20 recommendation of the local highway jurisdiction, which
21 is Clearwater County Road Department. So you can go
22 over 10 percent for a short distance if it doesn't
23 impact the entire road.

24 UNKNOWN PERSON: Example of that kind of road
25 would be Harmony Lights Loop.

1 MR. SIMON: Yeah. Now, personally I would like
2 to see no roads over 10 percent, but I understand in
3 the real world you can't do that -- because I'm the one
4 that has to maintain them.

5 CHAIRMAN BRUCE: That's right. Any other
6 questions for Mr. Simon?

7 UNKNOWN PERSON: I have a question, Mr. Bruce.

8 CHAIRMAN BRUCE: (Inaudible) closed to public
9 comment.

10 UNKNOWN PERSON: Okay, just him and I.

11 CHAIRMAN BRUCE: Commission may amend the motion
12 as necessary (inaudible) reasonable decision or may
13 send for a committee review. Are there any amendments
14 to the motion? There's no further debate or
15 discussion. The Chair puts the motion to a vote. The
16 question is: Shall the commission approve SUB06 --
17 excuse me, shall the commission recommend approval of
18 SUB060096, a Class B subdivision named South Fork
19 Estates requested by Ed and Carole Galloway?

20 (Aye in Unison.)

21 CHAIRMAN BRUCE: Those opposed say no. Is there
22 any abstaining? The ayes have it. And we have
23 recommended approval of SUB060096. Thank you for
24 participating in this hearing. As I stated earlier,
25 there is an appeal process for the -- for both of

1 these, as a matter of fact, you can pursue the appeal
2 process for the variance by going directly to the board
3 of county commissioners, and if you don't like what was
4 done on the plat you can go through the court system.
5 Are there any questions on the appeal process?

6 Ms. Kaufman, do we have an entry in the ordinance that
7 shows how to do the appeal process? Is there an
8 outline, or do you know that?

9 MS. KAUFMAN: There's two, and the one in the
10 zoning ordinance would be the most current way to --

11 CHAIRMAN BRUCE: But this is a subdivision.

12 MS. KAUFMAN: Right, but that public hearing
13 process in our appeal process is as a zoning ordinance,
14 it prevails.

15 CHAIRMAN BRUCE: Okay.

16 MS. KAUFMAN: I believe they have to -- let me.
17 It's under Article 13 of the zoning ordinance.

18 CHAIRMAN BRUCE: Mr. Jones, you have a copy of
19 that.

20 MR. JONES: (Inaudible.)

21 CHAIRMAN BRUCE: So touch base with Ms. Kaufman.

22 MS. KAUFMAN: And he actually has 20 days to
23 appeal it. I'm sure they will do it right away.

24 CHAIRMAN BRUCE: Are there any questions as to
25 our proceedings? The hearing for agenda Item No.

1 SUB060096 is now closed. Thank you for attending.
2 (Hearing concluded at 9:45 p.m.)
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CERTIFICATE OF TRANSCRIPTION

The undersigned does hereby certify that he correctly and accurately transcribed and typed the foregoing transcript from the TAPE RECORDING of the hearing which was reported on the 21st day of March, 2011, in the above-entitled action or proceeding.

Dated this 3rd day of May, 2011.

15/
Keith M. Evans, RPR, CSR NO. 655
Court Reporter

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CLEARWATER COUNTY
PLANNING AND ZONING HEARING
MONDAY, AUGUST 15, 2011
6:30 PM
ZV2011-2

TRANSCRIBED BY: KEITH M. EVANS, RPR, CSR NO. 655

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1 BE IT REMEMBERED that the above-entitled matter
2 came on for hearing before the Clearwater County Planning
3 and Zoning Commission at the hour of 6:30 p.m., August
4 15th, 2011, in the District Courtroom of the Clearwater
5 County Courthouse, City of Orofino, County of Clearwater,
6 State of Idaho.

7 (Thereupon the following oral proceedings
8 were had as follows, to-wit:)

9 CHAIRMAN BRUCE: Good evening. A quorum being
10 present the meeting will come to order. Please stand
11 and join me in the pledge to our nation's flag.

12 (Pledge of Allegiance was said.)

13 CHAIRMAN BRUCE: Be seated. Ms. Administrator,
14 would you please brief us on our emergency procedures
15 in case we have some kind of disaster.

16 (Briefing given on Emergency Exit Procedures.)

17 CHAIRMAN BRUCE: Thank you, Ms. Kaufman. Next I
18 would like to introduce our members of the Commission.
19 I will start out with Ms. Grimm, who is our recording
20 secretary. Ms. Kaufman is our Administrator. She is
21 also an ex-officio member of this Commission. And then
22 we have Mr. Woolsey, Mr. Smith, Mr. Riccomini, Mr.
23 Nation, Mr. Ketchum, Mr. Brown, Mr. Steiner, and I am
24 Mr. Bruce. Do we have any other ex-officio members?
25 First business in order is the adoption of the agenda.

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1 Did each member receive a copy of the agenda? Are
2 there any changes or corrections to the agenda?

3 MS. KAUFMAN: There is. Normally two weeks after
4 Planning and Zoning gives a recommendation the Board
5 hears it. Since we are the determining board there is
6 just a report, and that report will be given to the
7 Board of County Commissioners on Monday, August 22, at
8 11:00, and it is just a report of what became of this
9 meeting.

10 CHAIRMAN BRUCE: Thank you. Are there any other
11 changes or corrections to the agenda? If not, the
12 agenda is approved as changed.

13 Next business in order is the approval of the
14 minutes of our last meeting. Did each member receive a
15 copy of the minutes? Are there any corrections to the
16 minutes? I think on the back page I saw one spelling
17 correction. Instead of undue being u-n-d-o it should
18 be u-n-d-u-e. Are there any other corrections to the
19 minutes? If not, the minutes are approved as
20 corrected.

21 The next business in order is hearings for the
22 application as listed in the agenda, and I would like
23 to run over our procedure for conducting a hearing.
24 This Commission, I am talking about the Planning and
25 Zoning Commission for Clearwater County, must conduct

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1 its meetings in accordance with the provisions of
2 Idaho's open meeting law manual, Idaho's Land Use
3 Planning Act, the County's Zoning and Subdivision
4 Ordinances, the commissions bylaws, and the procedures
5 outlined in Robert's Rules of Order. Idaho Code and
6 the Land Use Planning Act require the Commission to
7 conduct hearings open to public comment for certain
8 items of business. Today's hearing will be classified
9 as a quasi-judicial proceeding, and it will be
10 conducted in accordance with the following: The Chair
11 will open the hearing for a specific agenda item and
12 ask if the applicants are present. The Chair will
13 request that the Administrator present a motion for the
14 agenda item. All motions are presented in the
15 affirmative or positive form. Commission members will
16 declare conflicts of interest, if any. Commission
17 members may, at any point during the hearing, direct
18 questions germane to the hearing to the Administrator.
19 Other ex-officio members, the applicant and citizens
20 must refrain from debate until close of public
21 comments. The Administrator will present staff
22 findings, and you will find those on the easel. She
23 will also read some or all of that information into the
24 record. The Chair states the main motion and opens the
25 hearing for public comment. The public hearing will

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1 begin with the applicant and proceed to those in
2 support of the application. Next the Chair will allow
3 testimony from citizens opposing the application. The
4 Chair will ask the Administrator for written
5 correspondence from citizens. The Chair will ask for
6 any further testimony. And, finally, give the
7 applicant the opportunity to rebut. Now, that further
8 testimony can include that testimony that's pro or con
9 or neutral. The Chair will close the hearing to public
10 comment and open debate and discussion by the
11 Commission. Remember now, that once we close the
12 public comment the only way that people in the gallery
13 can participate is if a member of the Commission
14 directs a question to you. When the debate is
15 completed the Chair will put the motion to a vote and
16 announce the results. Prior to closing the hearing the
17 Chair will explain following actions and, if necessary,
18 the process for further appeal.

19 MR. WOOLSEY: Mr. Bruce, I had a question.

20 CHAIRMAN BRUCE: Yes, sir, Mr. Woolsey?

21 MR. WOOLSEY: Since this is a rehearing -- I have
22 gone through this packet. It seems to me the question
23 that we are dealing with is going to revolve around
24 undue hardship, correct?

25 CHAIRMAN BRUCE: Yes. And we are going to cover

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1 that.

2 MR. WOOLSEY: Well, what I was going to ask is:
3 Are we going to limit the testimony to dealing
4 specifically with just undue hardship and not rehear
5 the entire --

6 CHAIRMAN BRUCE: You are correct. And if you
7 notice in the packet that you got the Board of County
8 Commissioners gave us guidance 1-3.

9 MR. WOOLSEY: I read that. It seemed like the
10 only issue that they were really sending back our way
11 was to resolve or gather evidence of undue hardship,
12 and that's what the question would revolve around. I
13 just wanted to verify that that was the case and remind
14 everybody beforehand.

15 CHAIRMAN BRUCE: That's the way I interpreted it,
16 and the Administrator interprets it the same way. Are
17 there any questions from anybody here about how we are
18 going to conduct the hearing? Mr. Smith?

19 MR. SMITH: Just the board members in this last
20 meeting we had a conversation about how we are going to
21 keep the transcript alive when there was to be redone,
22 and that was to basically raise your hand like you are
23 in the third grade again and ask to be identified by
24 the Chair so we don't get conflicts like we did last
25 time on the transcript.

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1 CHAIRMAN BRUCE: Okay. What Mr. Smith is talking
2 about, for those that were absent, was that in the
3 transcript there were numerous unknowns as far as
4 conversation or testimony. And so for us to be able to
5 clarify that and put that name we need to follow the
6 procedure as was just identified. Just raise your name
7 (sic), and I'll say your name and you can continue.
8 Any questions about that procedure? Ms. Kaufman, can
9 we take a look at some definitions?

10 MS. KAUFMAN: Yes.

11 CHAIRMAN BRUCE: Okay. If the Commission would
12 just look at this briefly. These are some words that
13 showed up in the agenda. Are there any questions or
14 additions to these definitions? Okay, that said, we'll
15 proceed. The hearing for the remand of agenda item No.
16 ZV2011-2, a request for a variance by Edward and Carole
17 Galloway is now open, and I recognize the applicants
18 that are present. With regard to Subdivision request
19 SUB060096, this request was to use the variance
20 provision from the Clearwater County Subdivision
21 Ordinance to modify the standards for the access road
22 to the subdivision by asking, one, for a reduction in
23 the minimum right-of-way width standards from 60 feet
24 to 30 feet except for 15 feet at the property line.
25 Two, for a reduction in the surfaced or finished width

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1 from 24 to 18 feet, except for 15 feet at the property
2 line. And three, to set aside the requirement to
3 dedicate the access road to public use.

4 The Commission granted all three variances.
5 However, an interested party and adjacent landowners
6 Edward L. and Donilee E. Shinn appealed this decision
7 to the Clearwater County Board of County Commissioners.
8 Per the appeal, the Board ordered each of the grants of
9 variance remanded to the Commission to receive
10 additional evidence and conduct additional fact finding
11 by virtue of an additional public hearing. The purpose
12 of this hearing is to determine whether or not the
13 element of undue hardship exists and to reevaluate the
14 consideration of undue hardship in light of the
15 remaining items to be found before a variance can be
16 granted. The Commission may, by majority vote,
17 regrant, conditionally grant, deny or postpone a
18 decision until a new public hearing shall be called on
19 the application. The Board of County Commissioners
20 gave us additional guidance, and I would like to read
21 that to you: As guidance the Board requests the
22 Commission consider the following: You can look in
23 your agenda, findings of fact, and that is on page 3 of
24 8, items 1, 2, and 3. Are there special circumstances
25 or conditions affecting the property such that the

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1 strict application of the provisions of this ordinance
2 would clearly be impracticable or unreasonable. And
3 two, are those special circumstances such that failure
4 to grant a variance would cause an undue hardship to
5 the developer. And three, would strict compliance with
6 the requirement of the ordinance result in inhibiting
7 the achievement of the objectives of the ordinance or
8 nullify the purpose of the ordinance or the
9 comprehensive plan. Is there any questions about this
10 guidance? The Chair requests that the Administrator
11 present a motion for agenda item remand ZV2011-2.

12 MS. KAUFMAN: I move that the Commission approve
13 ZV2011-2, a variance request by Ed and Carole Galloway.

14 CHAIRMAN BRUCE: Is there a second to the motion?

15 MR. RICCOMINI: Second.

16 CHAIRMAN BRUCE: Mr. Riccomini seconds. Are
17 there members of the Commission who wish to declare a
18 conflict of interest? Ms. Administrator, do you have
19 additions to the staff findings?

20 MS. KAUFMAN: I do. When the Board of County
21 Commissioners heard this appeal it was determined
22 that -- also raised on the appeal is the issue of
23 whether the easement, which the Galloways propose to
24 use for access the property, allows access road to be
25 utilized for ingress and egress for parties other than

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1 Galloway. And the Board, upon review of the record,
2 tentatively find that the bare language of the easement
3 itself does not prohibit subdivision of the property.
4 The Board does not intend to look behind the bare
5 language, nor to attempt to determine the historical
6 intent of the original parties to the grant and receipt
7 of the easement, but limits its review to the bare
8 language of the document which appears clear and
9 unambiguous. Sufficient evidence was entered at the
10 Commission level to support the findings that the
11 easement is legally adequate to allow subdivision. It
12 is felt that the proper forum for challenging the
13 intent and scope of the easement of this nature is
14 through the courts rather than the Board. With that
15 said, it has been determined that they do have the
16 right to give other parties that they sell their
17 property to easement across that property so it is not
18 on this appeal, and it is a non-issue. So, if you have
19 questions about it we aren't hearing that tonight, I
20 guess is how it works so --

21 CHAIRMAN BRUCE: Thank you, Ms. Kaufman. Are
22 there any other additions to the staff findings?

23 MS. KAUFMAN: I do. Mr. Galloway submitted a
24 letter as part of his testimony, and I am going to read
25 it. It is also on the staff report, and I have it up

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1 on the easel. This was to the Clearwater County
2 Planning and Zoning on the date of August 10th. To
3 whom, to address the issue of whether an undue hardship
4 exists in the matter of my request for several
5 variances, three, I believe I submit the following:
6 Attempting to satisfy conditions set out in a
7 mid-1970's ordinance is an undue hardship, especially
8 since said ordinance was originally put forward to
9 address urban high density checkerboard subdivisions,
10 which could and generally were expanded at a future
11 date using the same existing streets and right-of-ways.
12 In the 35 years since this ordinance was enacted, the
13 emphasis in Clearwater County has shifted from high
14 density urban to low density rural subdivisions;
15 therein lies the need to rely on variances to address
16 the vast difference 35 years has made. Clearwater
17 County has no ordinance addressing low density rural
18 subdivisions; hence, the hardship in trying to make a
19 2011 subdivision fit the requirements of a 1970's
20 ordinance. Let's look at this from this perspective.
21 I request that a variance to reduce the width of the
22 right-of-way from 60 feet to my existing 30 feet. Not
23 only is it a hardship for me to expand the width of my
24 right-of-way, it would be impossible. The way to
25 overcome this undue hardship is to access the needs of

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1 my low density rural subdivision as opposed to the
2 needs addressed in the 1970's ordinance, high density
3 urban. The urban one puts as many as six residences
4 per acre. Mine puts one residence per 10 acres,
5 approximately, thereby reducing car trips per day from
6 hundreds to 10, maybe 20, using said road per day. So,
7 the reason for my variance request to reduce the road
8 width from 24 feet to the adequate 18 feet is this low
9 density usage. The question now before us is can I get
10 this new road on a 30-foot easement. The Clearwater
11 County Road Supervisor, Rob Simon, said in a letter to
12 the Commission that a 30-foot easement is adequate in
13 this topography to get the desired 18-foot roadways.
14 He says 18 foot is adequate for this type subdivision.
15 It won't impede emergency vehicles. The same pertains
16 to the requested 15-foot bottleneck at the property
17 line. Line of sight is adequate for ingress and egress
18 of emergency vehicles, as well as general traffic.
19 Road costs present another undue extreme hardship.
20 While the consensus is that an 18-foot road on a
21 30-foot wide easement is adequate for this low density
22 subdivision, the cost differential is substantial
23 between the widths. The 24 width can cost as much as
24 \$35 per foot. An 18 foot road will come in at around
25 \$12 to \$15 per foot. Never were state or county land

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1 use ordinances intended to place undue burdens on
2 private property owners. They were to place minimum
3 standards for development. These minimum standards are
4 not interchangeable between different types of
5 subdivisions without using the variance process or
6 keeping undue hardships on property owners. Let's
7 summarize. 18-foot road is deemed adequate. 30-foot
8 easement is adequate for an 18-foot road. A 15-foot
9 gate serves as well and hinders nothing or no one. In
10 the requirements above these are undue hardships to the
11 landowner. What about the five years I have tied up in
12 this quasi-judicial process? Is it not this undue
13 hardship. Holding me up with other identical
14 subdivisions on Freeman Creek have passed and are fully
15 operational. Is this a hardship? I urge the members
16 of the Planning and Zoning Commission to pass these
17 variances as they have done twice before, as the facts
18 remain the same. Send this back before the Board of
19 County Commissioners where elected officials can make
20 the final decision. And this was signed by Ed
21 Galloway, landowner.

22 CHAIRMAN BRUCE: Ms. Administrator, do you have
23 other additions to the staff findings?

24 MS. KAUFMAN: I just want to point out just a few
25 key things which are in the staff report. Again, there

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1 was a meeting for the developer and myself and the
2 Prosecuting Attorney to determine what an undue
3 hardship was since this seems to be a question that
4 even the courts have a hard time trying to get a
5 definition for. And some of the facts that were in the
6 last hearing (inaudible) what Mr. Galloway demonstrated
7 himself in his letter; that the nature of the Galloway
8 property as compared to other developed property is the
9 special circumstance that the strict application of the
10 provisions of this ordinance would be clearly
11 impracticable or unreasonable. It is not accessed by
12 public road but by easement across neighboring
13 property. Easement is only 30 feet in width. Easement
14 is a private easement, non-public and cannot be
15 expanded or made public without the consent of other
16 landowners. The development is into ten acre aliquot
17 parts meaning it is extremely low density, very rural.
18 There is very little chance of neighboring development,
19 and there is no need for a network of public roads to
20 support high density development, as this is not an
21 impact area. Also, Rob Simon, he did declare at the
22 last hearing -- and I did speak with him today. He
23 couldn't make it. Again, Middle Road is cataloged as a
24 dirt, non-maintained, non-graded and drained secure
25 county road but not a county right-of-way. However, it

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1 is only maintained to Brock's property which is
2 approximately one mile passed Brown Road intersection.
3 The portion of the road that is maintained is
4 classified as all-weather road. There is enough room
5 for the approach radius of Summer Range Drive with the
6 30-foot easement and Middle Road's 50-foot petitioned
7 right-of-way. Recorded petitions related to the fact
8 that of what is now called Middle Road are the petition
9 recorded in 1910 that extends Middle Road from
10 intersections of Brown Road north easterly through
11 sections 9, 10, 15, 16 of township 37 north, range 01
12 east of the JA Holliday petition recorded in 1911.
13 And, however, it was never built. In general access
14 road Summer Range Drive is constructed within county
15 specifications with the following exceptions: Cutbanks
16 need to be re-sloped to a 2:1 slope to alleviate soil
17 erosion and ditch sloughing. All culverts need to be
18 18 feet minimum. Realignment of approach to Middle
19 Road to achieve more than 90-degree angled approach.
20 And due to the general lay of the land, the lack of
21 horizontal curves and minimal vertical curves it is
22 Rob's opinion that the road as constructed with an
23 18-foot driving surface would be adequate and not
24 unsafe with a 30-foot easement.

25 CHAIRMAN BRUCE: Thank you, Ms. Kaufman. Do you

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1 have other additions to the staff findings?

2 MS. KAUFMAN: Not at this time.

3 CHAIRMAN BRUCE: Are there any questions from the
4 Commission to Ms. Kaufman about the additions to the
5 staff findings? A motion has been made and seconded.
6 The question is: Shall the Commission approve the main
7 motion as presented by the Planning and Zoning
8 Administrator? The hearing is now opened to public
9 comment. Those who testify must come forward to the
10 podium and state their name and address for the record.
11 Does the applicant have testimony to clarify or support
12 this application? And the Chair recommends that the
13 applicant present testimony, or at least present
14 yourself for questioning.

15 MR. GALLOWAY: I am Ed Galloway of Freeman Creek,
16 the applicant.

17 CHAIRMAN BRUCE: Before you start on your
18 testimony, Mr. Galloway, you heard us talk about the
19 guidance that the Board gave us, and we would like to
20 confine testimony to those areas. Go ahead and
21 proceed, then.

22 MR. GALLOWAY: You know, I have no testimony
23 whatsoever. Five years of testimony on this, we have
24 pretty well covered it. Bobbi, in the letter I wrote,
25 pretty well covered the facts. It seems what the Board

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1 wants to know is they just want to clarify the findings
2 of fact. And they want -- I am open for any questions.
3 I was here at all the meetings, and I will answer any
4 questions. I would appreciate it if you will address
5 them to me. Thank you.

6 CHAIRMAN BRUCE: Just remain here until we finish
7 with the questions. This is Mr. Bruce with a question
8 to Mr. Galloway. I noticed in your letter you
9 mentioned the word impossible, and I believe that had
10 to do with the easement. Was that -- Ms. Kaufman, can
11 you help me on that?

12 MS. KAUFMAN: That it would be impossible for him
13 to obtain the additional easement required.

14 CHAIRMAN BRUCE: Could you explain that, please.

15 MR. GALLOWAY: I have a 30 foot legally defined
16 easement. Any neighbor that is going to take me to
17 court isn't going to give me another 30 feet. So I
18 would find that impossible. Does that answer your
19 question?

20 CHAIRMAN BRUCE: Well, have you proposed that,
21 that you buy additional property from that neighbor in
22 order to meet the easement requirements?

23 MR. GALLOWAY: No, I did not. Our road
24 supervisor said 18 foot road is enough, and it will fit
25 on a 30-foot easement.

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1 CHAIRMAN BRUCE: What we are trying to do is
2 establish undue hardship, and so my question --

3 MR. GALLOWAY: Well, my neighbor is here tonight.
4 Why don't you ask them if they would give me another
5 30 feet. I went to my neighbor's house. It was pretty
6 obvious they were not going to help me out in any way.
7 That's what I base that on.

8 CHAIRMAN BRUCE: Okay. Are there any questions
9 from the other Commission members for Mr. Galloway?

10 MR. WOOLSEY: Yeah, I will ask one.

11 MR. CHAIRMAN: Mr. Woolsey?

12 MR. WOOLSEY: Not to put a word in, but basically
13 were these easements not to be granted then basically
14 your prospects for that property would be what?

15 MR. GALLOWAY: Would you repeat that, please.

16 MR. WOOLSEY: If -- excuse me, not easement,
17 wrong word. If our variances are not granted then your
18 prospects for that property would be what?

19 MR. GALLOWAY: If the variance isn't granted you
20 would be in direct violation of a Supreme Court
21 decision.

22 MR. WOOLSEY: No, that is not what I asked. I
23 asked you if they were not to be granted what would
24 become of your property?

25 MR. GALLOWAY: I have no idea. It would just be

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1 a piece of logged over --

2 MR. WOOLSEY: That's what I'm asking. So you

3 would not be able to develop it is that what --

4 MR. GALLOWAY: Yes, sir.

5 MR. WOOLSEY: And it would sit there in the

6 condition that it's in or would --

7 MR. GALLOWAY: I'm really deaf.

8 MR. WOOLSEY: It would just sit in the condition

9 that it's in, and it wouldn't --

10 MR. GALLOWAY: Yeah.

11 MR. WOOLSEY: And it wouldn't be put to other

12 uses?

13 MR. GALLOWAY: Yeah. There's no other use for

14 it. It's in an area on Freeman Creek that's all

15 developed. There's some larger -- there's some larger

16 tracts that aren't. But if you'll take an aerial photo

17 of Freeman Creek it's all fives -- well, two and a

18 halves to twenties, then there's some larger tracts.

19 It's a development area.

20 MR. WOOLSEY: That's all I had.

21 CHAIRMAN BRUCE: Mr. Smith?

22 MR. SMITH: The Middle Road, the 1910 plat on

23 that, what was the width of that road that was

24 originally platted; do you know?

25 MR. GALLOWAY: As far as I can tell 50 feet wide.

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1 I was given a nonpaying contract from the county to
2 brush that road out and rebuild it. We did the brush,
3 and then the county wanted us to hold off on the
4 rebuilding. I don't want to get into any past things,
5 but this whole thing has been passed by you people and
6 the county commissioners.

7 CHAIRMAN BRUCE: Mr. Galloway, if you could just
8 answer the questions that the commission members
9 present I would appreciate it. Are there any other
10 commission members with a question for Mr. Galloway?
11 Mr. Nation?

12 MR. NATION: Mr. Galloway, which is the neighbor
13 that probably would not give you the easement?

14 MR. GALLOWAY: Well, it would be the landowner of
15 record, Ed Shinn, and I believe his wife.

16 MR. NATION: Shin is that who we're talking
17 about?

18 MR. GALLOWAY: Yeah. They own the land that my
19 easement crosses.

20 MR. NATION: Okay. That's all I have.

21 CHAIRMAN BRUCE: Are there any other commission
22 members with questions for Mr. Galloway? Thank you,
23 Mr. Galloway.

24 Is there testimony from citizens supporting the
25 motion? Is there testimony from citizens opposing the

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1 motion? Come forward, state your name and address for
2 the record, please.

3 MR. INGLE: Don Ingle, 3592 Freeman Creek Road.
4 To be real simple real quick like, I have approached
5 Mr. Galloway trying to come up with a reasonable price
6 that between myself and Mr. and Mrs. Shinn to put
7 together and just buy that piece of property and be
8 done with this whole mess. He refuses. That's a fact.
9 So we get that straight right off the bat. I was
10 assistant fire chief for Evergreen Fire for several
11 years. One of my major concerns is fire access and EMS
12 services to this subdivision with limited roads,
13 particularly in the winter. I know you folks have not
14 had any input or recommendations from our local fire
15 chief, Mr. Howard Weeks, according to Ms. Kaufman. He
16 absolutely refuses to participate in this. He did
17 speak with me personally and says that he recommends 20
18 foot wide roads for any subdivision five units or more,
19 and that's also an Idaho Fire Code. I don't know if
20 you folks know, but we had a death on the Elk Ridge --
21 on Cougar Ridge last year, which is part of the Elk
22 Meadows Subdivision off of Freeman Creek. In this case
23 the deceased person's home was less than a quarter mile
24 off Freeman Creek Road. The snow was too deep for the
25 ambulance to even get in. One of our firefighters,

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1 Mr. Bruce Yinney, finally walked in --

2 CHAIRMAN BRUCE: Sir, I'm going to cut off your
3 testimony. What I want to know is answers to guidance
4 that the board of county commissioners gave us.

5 MR. INGLE: Okay.

6 CHAIRMAN BRUCE: What we're trying to determine
7 here is whether or not there's undue hardship for Mr.
8 Galloway.

9 MR. INGLE: I realize that. I also read up there
10 that it said any other pertinent testimony, too, on
11 that first letter. If I'm done -- I'm done, then. Is
12 that it?

13 CHAIRMAN BRUCE: No. You can proceed as long as
14 you're addressing the undue hardship.

15 MR. INGLE: Well, we're talking undue hardship
16 for whoever buys this mess that he's trying to
17 subdivide; that's what we're talking undue hardship.
18 The last thing, really, that you folks need to do
19 before you make any decisions on this, go take a look
20 at it, okay. There's no line of sight. There's some
21 deep cuts. One blows in completely. We're not going
22 to get in and out of there. And, again, if we could
23 come to some kind of terms and buy that property --

24 CHAIRMAN BRUCE: Address your testimony
25 (inaudible), please.

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1 MR. INGLE: I'm sorry. If we could be reasonable
2 human beings and come to some kind of terms we'd buy it
3 and be done with it. Anyway, thank you.

4 CHAIRMAN BRUCE: Thank you for your testimony.

5 MR. INGLE: Do any of you have any questions of
6 me?

7 CHAIRMAN BRUCE: Are there any questions from the
8 commission?

9 MR. RICCOMINI: I do have one.

10 CHAIRMAN BRUCE: Mr. Riccomini?

11 MR. RICCOMINI: When you're saying buying, what
12 property are you trying to --

13 MR. INGLE: The whole subdivision.

14 MR. RICCOMINI: You're talking about buying all
15 of Mr. Galloway's --

16 MR. INGLE: The hundred acre piece, yes. Yes.
17 Yes.

18 MR. RICCOMINI: So you're looking for some type
19 of a decent price that everybody (inaudible.)

20 MR. INGLE: (Inaudible) live happily ever after.
21 Ed doesn't want a subdivision going through the middle
22 of his property. I'm concerned about fire and
23 emergency services, everything else back there. This
24 is a hole back in the woods. You're talking a mile to
25 get to it just off of Middle Road.

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1 MR. RICCOMINI: Thank you.

2 CHAIRMAN BRUCE: Thank you. Is there any other
3 questions for the gentleman from the commission
4 members?

5 UNKNOWN PERSON: Oh, I'm sorry.

6 UNKNOWN PERSON: I don't have any.

7 CHAIRMAN BRUCE: Thank you for your testimony,
8 sir.

9 MR. INGLE: You bet.

10 CHAIRMAN BRUCE: Is there testimony from other
11 citizens opposing the motion? Would you say your name
12 and address for the record, please.

13 MR. KINYON: Yes. Roger Kinyon, 476 Aspen Lane.
14 I got a little problem here. It says there is little
15 chance of neighboring development, and we've got the
16 250 acres right behind this piece of property. And I
17 guess I would like to make a comment and a question at
18 the same time. Does this variance, when we develop
19 that 250 acres, does this carry over to us? Do we get
20 the same -- do we have a have a 30-foot right-of-way?
21 Do we get to make an 18-foot road?

22 CHAIRMAN BRUCE: We're receiving testimony, sir.
23 We're not going to debate.

24 MR. KINYON: Well, if this road continues through
25 this property onto our development it's part of it.

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1 CHAIRMAN BRUCE: Our concern is proving whether
2 or not there's undue hardship that would result in the
3 need for this variance.

4 MR. WOOLSEY: The plat map also shows no
5 continuing roads. They both terminated cul-de-sacs.

6 MR. KINYON: So then it wouldn't involve the
7 development behind it.

8 MR. WOOLSEY: It doesn't appear to at this time.

9 CHAIRMAN BRUCE: For the record that's
10 Mr. Woolsey speaking.

11 MR. RICCOMINI: I have a question.

12 CHAIRMAN BRUCE: Mr. Riccomini with a question.

13 MR. RICCOMINI: Are you talking about the
14 Southfork Estates is that what you have? When you say
15 behind which one?

16 MR. KINYON: It would be directly behind.

17 MR. RICCOMINI: Which is behind it? What do you
18 call behind it?

19 MR. KINYON: That Bennett Lumber Company.

20 MR. RICCOMINI: I'm not familiar with that so
21 just point on the map.

22 MS. KAUFMAN: This property.

23 MR. KINYON: That's part of it right there. And
24 that would over here in the white. There's 250 acres
25 in there.

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1 MR. RICCOMINI: I just didn't know which behind
2 you were talking about.

3 MR. KINYON: So when we develop that we wanted to
4 know if we got the same treatment, or if we got to put
5 in 60-foot right-of-way.

6 MS. KAUFMAN: I will answer that for you as
7 administrator. The standard in the ordinance apply to
8 everybody. If you develop your property and you had
9 the same sort of hardship -- undue hardship as this
10 applicant we would review it the same way, and you
11 would be responsible to do exactly what Mr. Galloway
12 has had to do. As far as I understand the easement
13 that Mr. Galloway has he wouldn't actually have the
14 right to give you that easement to go that way so
15 there's a lot of variables that can happen. So, yes,
16 that's a part of a variance is for people within the
17 same --

18 MR. KINYON: Well, I guess our concern is if we
19 got to spend twice as much money on a road we're
20 competing against the same development.

21 CHAIRMAN BRUCE: Sir, we're here to receive
22 testimony.

23 MS. KAUFMAN: I'm just clarifying what the
24 ordinance states. So, yes, if you could not meet those
25 ordinance standards you would the have the same rights

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1 as this particular applicant.

2 CHAIRMAN BRUCE: Ms. Grimm, did you get the
3 spelling of his name?

4 MS. GRIMM: (Inaudible.)

5 CHAIRMAN BRUCE: Could you help us with the --

6 MR. KINYON: Sure. K-i-n-y-o-n.

7 CHAIRMAN BRUCE: Are there any more questions
8 from the commission for the gentleman? Is there other
9 testimony from citizens opposing the motion? Would you
10 come forward, please, and state your name and address
11 for the record.

12 MR. JONES: My name is Garry Jones. I'm an
13 attorney from Lewiston, 1304 Idaho Street in Lewiston.
14 I'm here representing Ed and Donilee Shinn. Chairman
15 Bruce, members, I'm sure this has been a long process
16 for all of us, and I would like to address -- I'm going
17 to try very hard to address only the hardship issues
18 that are here tonight. I want to make sure that one
19 thing that Ms. Kaufman said was clear, there are really
20 only two issues that we're deciding here tonight; that
21 would be the 60-foot to 30-foot and the 24-foot to
22 18-foot. The third issue is the one that the legal
23 basis has been determined sufficiently. I want to make
24 sure everybody understands that. There were three
25 requested variances. One had to do with easement, and

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1 your County Commissioners determined that was not --
2 that was something that was sufficient for you. So
3 there's only two issues where the hardship applies.

4 CHAIRMAN BRUCE: There's three items that they
5 list here as far as guidance.

6 MR. JONES: Yes, that is right, but there were
7 three variances.

8 CHAIRMAN BRUCE: That's correct, right.

9 MR. JONES: And we're only really talking about
10 two of the variances. And that's been somewhat
11 confusing, and I want to make sure that, while we don't
12 necessarily agree with this, that the Board of
13 Commissioners said as far as that third one as to how
14 far can the easement be utilized, that's not going to
15 be before you because we're going to go ahead and
16 affirm what you did earlier on that one. So we're only
17 talking about the hardship on the first two.

18 One other thing I would like to address -- and I
19 don't know everybody's name, and I apologize for
20 that -- the gentlemen on the far left --

21 CHAIRMAN BRUCE: Mr. Woolsey.

22 MR. JONES: Mr. Woolsey, you asked a question as
23 to what would happen to Mr. Galloway's property if this
24 easement -- if these variances weren't granted. Ms.
25 Kaufman could give you some more direction, because I'm

1 not familiar enough with the Clearwater County
2 ordinance but in a subdivision there are certain
3 parcels of property that can be sold without having to
4 do a subdivision. I don't know if it's 20 acres or 25
5 acres.

6 MR. WOOLSEY: 20.

7 MR. JONES: It's 20. Then what Mr. Galloway
8 could do is he can use the easement that goes across
9 this property. That can be utilized by him, and he can
10 sell 5 20-acre parcels. We can't stop that. We're
11 only doing this as far as the subdivision in going from
12 the 5 to the 10. So, and that's relative as far as
13 hardship is concerned because you're concerned, I am
14 sure, with what is he going to do with the property if
15 these aren't granted.

16 Clearwater County has a subdivision ordinance,
17 and that subdivision ordinance is the law in Clearwater
18 County right now. It doesn't matter if it was granted
19 in -- if it was passed in 1970 or 1870. It's the law.
20 If that ordinance is outdated it needs to be changed,
21 and until -- and that's a decision for the County
22 Commissioners and people to make. What we're here
23 tonight about is whether you can make a variance, a
24 case-by-case variance on a particular request. And I
25 don't know what was given to you as far as the report

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1 from the Commissioners, but what I have in undue
2 hardship it's talking about special circumstances that
3 affect this property and are not applicable in general.
4 So, the fact that it's taken five years to get to this
5 point, we're not talking about that. We're talking, is
6 there something particular about this piece of property
7 that makes it so that you cannot put -- you cannot
8 comply with the requirements of your subdivision
9 ordinance, which requires, as you'll recall, a 60-foot
10 right-of-way and a 24-foot road.

11 Now, I don't know if you gentlemen had an
12 opportunity to see this property. Some of you've
13 probably hunted it, know it like the back of your hand.
14 I do have a few pictures here that I think will give
15 you a little bit of help in getting a general idea of
16 what the property looks like. And I only have one copy
17 for each of you.

18 MS. KAUFMAN: Are you submitting this for the
19 record?

20 MR. JONES: There are nine, and I would like them
21 introduced for the record.

22 CHAIRMAN BRUCE: There were enough duplicates
23 here for everybody or --

24 MR. JONES: No, there is only one set for
25 everybody. But if you're not familiar with it I'll

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1 just generally -- and the purpose in doing this is to
2 say, is there anything that's really different about
3 this piece of property, that's different than any other
4 piece of property? And if you start to look at these
5 pictures, the first three pictures, one, two and
6 three -- and you might have both copies of my number
7 one.

8 CHAIRMAN BRUCE: Yeah, there's two of them here.

9 MR. JONES: That's okay. Those three pictures
10 right there, one, two and three, are taken from the
11 east of the proposed roadway, and they're looking
12 towards the west. And you can actually, in some of
13 those, you can see where part of the existing roadway
14 currently exists. My point in showing those is to show
15 you, this isn't property that's as steep as a cow's
16 face. This is property that's gently rolling and very
17 capable of putting a road at virtually any place. It's
18 very, I mean, it's pretty darn level ground.

19 If you move onto these pictures to picture No. 4,
20 that's what the property looks like as it leaves Middle
21 Road, and you can see it's -- there's a road that's
22 been there for a period of time. It's been logged by,
23 I believe, by Mr. Galloway and you can see he would be
24 putting his road over that. But there's nothing
25 particularly difficult about building a new road there.

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1 Yes, sir?

2 MR. KETCHUM: I got a question.

3 CHAIRMAN BRUCE: Darrel Ketchum.

4 MR. KETCHUM: You've got these exhibits numbered.

5 Could you, when you speak about something could you

6 speak about the exhibit numbers that you are speaking

7 about?

8 MR. JONES: Yeah, I was doing that. That's why I

9 said the first three had to do with just a general look

10 of what the property is like, the first three. Number

11 4 is taken, looking towards the north, as it leaves

12 Middle Road and starts across the Shinn property

13 towards the Galloway.

14 MR. WOOLSEY: If I may interrupt, sir?

15 MR. JONES: Yes, sir.

16 MR. WOOLSEY: Can you tie this into undue

17 hardship?

18 MR. JONES: Well, I think it's undue hardship

19 because if you have a piece of property that is very

20 steep and you can't build a road -- in other words,

21 you've got to have a narrower road because you simply

22 can't build it, but this is just plain flat ground.

23 There's no undue hardship in building a road across

24 this property. I think it's very relevant as to

25 whether or not this is an undue hardship in building

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1 it.

2 MR. WOOLSEY: Can I ask you -- excuse me.

3 CHAIRMAN BRUCE: Mr. Woolsey, question for Mr.
4 Jones.

5 MR. WOOLSEY: I think that's Mr. Galloway's
6 argument, is that the road is suitable to be able to
7 get by in a narrower base because of the same features
8 that you're describing. That's why it would be okay to
9 reduce the road width is because it lends itself --

10 CHAIRMAN BRUCE: Okay, Mr. Woolsey, we can't
11 enter into debate.

12 MR. WOOLSEY: No, but I'm asking him if that --

13 CHAIRMAN BRUCE: Go ahead and ask a question, if
14 you have a question.

15 MR. WOOLSEY: No, I was just asking him to
16 clarify because it was my understanding that his
17 question, that's why it was suitable to have a narrow
18 road base.

19 MR. JONES: But that is not a reason to deviate
20 from the width of the County just because it may be
21 adequate, as your Road Commissioner says. We are not
22 talking about what's adequate, we're talking because
23 you start out with an ordinance that says it has to be
24 24-foot surface. If you're going to go less than
25 30-foot there have to be special circumstances.

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1 MR. WOOLSEY: Is it a hardship if you only have
2 30 feet that you're allowed to put it in; that by your
3 agreement?

4 MR. JONES: That can be one of the determinations
5 that you can make, but I don't think that the -- I
6 think when you look at the statute, you look more at
7 topography and you look at, is there something in
8 topography that makes it difficult. The fact that he
9 only has a 30-foot area I do not believe constitutes a
10 hardship.

11 MR. WOOLSEY: Has it been found elsewhere that if
12 you're constrained by an agreement?

13 MR. JONES: We can't find anything that says if
14 you're constrained by the area that you have. But,
15 aren't we all constrained by what we own. He has
16 30-foot to do something in. Right now he can put five
17 places back there using the 30-foot. He wants to go to
18 10. If he wants to go to 10 he has to comply with the
19 County Zoning Ordinance. And the fact that he doesn't
20 have a wide enough area that, by itself, is not a
21 hardship, in our opinion. And that's one of the things
22 that you're going to decide. There's no question about
23 that.

24 MR. RICCOMINI: I have a question.

25 CHAIRMAN BRUCE: Mr. Riccomini.

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1 MR. RICCOMINI: There was a question about the
2 gate, the area right in here that narrows down.

3 MR. JONES: Yes, sir.

4 MR. RICCOMINI: Is that in any of these pictures?

5 MR. JONES: I don't have a close-up of that
6 but -- because I think that's something that I think
7 you pretty much already determined what's going to
8 happen as far as that 15-foot at the bottleneck, yeah.
9 Yes, sir?

10 CHAIRMAN BRUCE: Mr. Nation with a question.

11 MR. NATION: Mr. Jones, could you tell us what 5,
12 6 and 7 and 8 are, and 9, please.

13 MR. JONES: Yeah, I just haven't gotten that far.
14 Well, when you get to 5 you're heading down -- towards
15 the end of it and you're going to -- No. 5, you're
16 going towards Mr. Galloway's property. If you look
17 about an inch and a quarter from the top of the page
18 you'll see three posts. That's Mr. Galloway's
19 property. And the point is, again, it's flat property.
20 And as far as the other properties, 6, 7 and 8, they
21 are looking the other direction from Mr. Galloway's
22 property back up the road towards Middle Road. And
23 again you can see that this is not difficult. Seven is
24 looking -- 6, first of all, 6 is looking is a closer
25 view going up towards the gate. Six you can see

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1 that -- you can see the gate where it turns into
2 15 feet. But my real point, my real point is, it's
3 level ground.

4 Seven, you're looking back towards -- back
5 towards the road. Eight, again, you're looking back
6 towards the road. Just all I'm trying to show you
7 because one of the things that your ordinance talks
8 about is topography. This is not difficult area to
9 build a road on.

10 Nine is the last piece of property. It's the
11 last view, again looking back towards the road. And
12 the only other thing that that shows is, this is clay
13 like soil. You can see that from the picture. But my
14 real point in any of those photographs, in case you're
15 not familiar with it, this is about as level as it gets
16 in this county. And so the topography itself, there's
17 nothing special about it.

18 Mr. Galloway lists two reasons for hardship. He
19 says, number one; he says you got an ordinance that's
20 outdated. If that's a hardship, then every single
21 person that comes in here has that hardship. An
22 outdated ordinance is an outdated ordinance. That is
23 not a hardship.

24 The second thing that he lists is the cost. Of
25 course, every road that gets wider is going to cost

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1 more. That is not a hardship. If that's a hardship
2 you might as well scrap your entire ordinance because
3 everyone is going to want to build a narrower road
4 because, of course, it's going to cost less money.
5 That's not a hardship. If you look at -- if you look
6 at what the guidance that you got from the County
7 Commissioners, it says that the undue hardship as a
8 result of special circumstances affecting the property
9 and not applicable, in general, to all property. Well,
10 the cost is applicable, in general, to all property.

11 MR. WOOLSEY: Mr. Woolsey, I have one more
12 question. And you're representing the Shinns, and I
13 don't expect an immediate answer, but will they sell
14 him more right-of-way?

15 MR. JONES: Well, I can't speak for them, but I
16 do feel fairly confident in saying no.

17 MR. WOOLSEY: Thank you.

18 MR. JONES: Because, obviously, if there was a
19 way to get this -- I guess everything is for sale at a
20 price, but, I mean, we are talking reasonable.

21 MR. WOOLSEY: Correct.

22 MR. JONES: And when the Shinns bought this piece
23 of property there was a 30-foot easement on it. And
24 people have a right. They know what you can put on a
25 30-foot easement. What you can typically put on a

1 30-foot easement, you can't build a subdivision because
2 the ordinance says you have to have a 60-foot wide.
3 And so if you want to give someone an easement so they
4 can get back to their property you can do that with
5 some degree of confidence that there's not going to be
6 a subdivision back there. And I would say that if you
7 build -- if you get a 30-foot easement and bootstrap it
8 into something more, that's not a hardship. That's
9 just trying to convince you that it's a hardship.

10 MR. WOOLSEY: I guess an extension of that
11 question would be, then: On a limited easement
12 wouldn't the conditional use or the use of that be
13 defined in the easement when it was granted?

14 MR. JONES: Well, that was the issue -- that's
15 the issue that, I think, that the County Commissioners
16 said they weren't going to get into tonight.

17 CHAIRMAN BRUCE: That is for the courts.

18 MR. JONES: Yeah, I have a different opinion
19 but --

20 MR. WOOLSEY: But I mean, I was just asking his,
21 kind of, I guess, semi-legal opinion, that if
22 somebody -- if he is suggesting that they imply that
23 they didn't want anything else to go back there and
24 that's why they only granted a 30-foot easement. And
25 so what I was asking is if, by doing so, wouldn't they

1 have explicitly said that?

2 MR. JONES: Well, they did explicitly say that it
3 can't be used for a public road.

4 CHAIRMAN BRUCE: We're getting outside.

5 MR. JONES: I think we're still talking about
6 hardship. But, anyway, that is something that they
7 said that we're really not talking about tonight, and I
8 agree with Chairman Bruce on that. I think that what
9 you have to do is you have to follow the three things,
10 and they're in the conjunctive: are there special
11 conditions affecting this property. Number two, would
12 they fail because of the special conditions, would it
13 be an undue hardship to grant the variance. And then
14 the third one, would strict compliance achieve the
15 objectives of the ordinance? It's in the conjunctive.
16 And you have to have specific findings. You have to
17 find as a Commission what are the areas of the
18 hardship. And that's all there is for tonight, really.
19 I mean, we can talk all night long. Mr. Galloway was
20 really very pleasant tonight because he really did --
21 he conducted himself.

22 CHAIRMAN BRUCE: If you would confine your
23 comments to the Chair, please.

24 MR. JONES: Yeah, but in any event, I really have
25 nothing further on this thing but you have to have a

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1 specific finding, specific, what is the hardship? And
2 why is that hardship different than every other piece
3 of property out there? I would submit to you there is
4 no hardship in that respect. Questions?

5 CHAIRMAN BRUCE: Mr. Nation?

6 MR. NATION: Stop me if I'm out of line here, but
7 is it not true that the Shinns simply do not want him
8 to develop at all?

9 MR. JONES: The Shinns -- I'll answer the
10 question. The Shinns want -- when you buy property in
11 the country you want to be as private as possible.
12 They recognize there can be five people there. They
13 don't want 10.

14 MR. WOOLSEY: They don't even live there, though,
15 right?

16 MR. JONES: Well, they have a house there. They
17 have a considerable investment.

18 CHAIRMAN BRUCE: (Inaudible.)

19 MR. JONES: And who is to say what happens to
20 that house in the future? But go ahead. There's
21 another question.

22 MR. KETCHUM: I've got a question for the Board.
23 Mr. Ketchum. How long ago did this Board grant the
24 permission for the subdivision in the first place? It
25 was some time ago, wasn't it?

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1 CHAIRMAN BRUCE: It's never gone through the
2 final plat stage at the Board of County Commissioners
3 level. We've recommended it.

4 MR. KETCHUM: The subdivision hasn't, in itself?

5 CHAIRMAN BRUCE: No. We approved a preliminary
6 plat, and then it went forward to the Board of County
7 Commissioners. And we did that just in March, because
8 we heard that hearing right after the variance. After
9 we approved the variance, then we heard the final plat
10 recommendation and we forwarded that to the Board of
11 County Commissioners.

12 MR. KETCHUM: So, the actual plat for the
13 subdivision has not been approved?

14 MS. KAUFMAN: No. It can't be approved until
15 this variance.

16 CHAIRMAN BRUCE: They put it on hold and won't
17 consider it until these issues are resolved.

18 MR. JONES: The whole thing revolves around
19 whether there can be access to this property that
20 complies with your subdivision ordinance.

21 CHAIRMAN BRUCE: Any other questions for Mr.
22 Jones from members of the Commission?

23 MR. JONES: Thank you.

24 CHAIRMAN BRUCE: Thank you, Mr. Jones. Is there
25 other testimony from citizens opposing the motion?

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1 Ms. Administrator, do you have written correspondence?

2 MS. KAUFMAN: Yes, I do. This is a letter
3 submitted by the Idaho Department of Lands. They
4 submitted it back in February when we heard this
5 application the first time. They wanted to resubmit
6 the same letter stating that: "Thank you for the
7 opportunity to review and comment on the Edward and
8 Carole Galloway's application for a variance request to
9 vary access road specifications under Article IV of the
10 Clearwater County Subdivision Ordinance ZV2011-2.

11 As you may know, Idaho Department of Lands'
12 mission is to manage State Endowment Trust Lands (State
13 Trust Lands) in a manner that will maximize long-term
14 financial returns to the Beneficiary institutions. The
15 IDL mission is a constitutional mandate and is overseen
16 by the State Board of Land Commissioners. State Trust
17 Lands are not managed for the public at large and
18 should not be referred to as 'public lands' or 'open
19 space,' either specifically or in a generic sense.
20 These are working lands producing revenue for the
21 Beneficiary Institutions.

22 Idaho Department of Lands has reviewed the
23 application materials received February 8th, 2011
24 provided by Clearwater County for the Galloway Variance
25 Request. Based on the documentation provided to IDL

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1 the development will not impact State Trust Lands at
2 this time. Should the proposed development be modified
3 during the review or approval process, IDL requests
4 that updated application information be submitted to
5 the Ponderosa Area Office for additional review.

6 Thank you again for the opportunity to review and
7 comment on this application." And that was signed by
8 Sam Charles, Ponderosa Area Manager.

9 CHAIRMAN BRUCE: Ms. Kaufman, do you have other
10 written correspondence?

11 MS. KAUFMAN: No, I do not.

12 CHAIRMAN BRUCE: Thank you. Is there any other
13 testimony especially neutral? This gives anybody out
14 there an opportunity to come back and testify again.
15 There's no additional testimony, the applicant may
16 rebut any or all testimony that you heard opposing your
17 application. Again, I would like to remind you to
18 confine your comments to what we're dealing with,
19 primarily the undue hardship factor.

20 MR. GALLOWAY: I didn't receive a copy of these
21 pictures. I would certainly like to see them. Thank
22 you, Mr. Chair.

23 CHAIRMAN BRUCE: You are welcome, Mr. Galloway.

24 MR. GALLOWAY: I would like to thank Mr. Jones,
25 too. He can send me a bill. He's really helped here

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1 tonight. I'll just rebut what was brought up.
2 Regarding our 1979 subdivision ordinance, I agree.
3 Fully agree with Mr. Jones. The County should have
4 updated that way, way before now, and so if there's
5 anybody here that is kidding themselves that we can
6 subdivide in 2011 on a low density rural subdivision
7 using a 1979 high density urban subdivision
8 ordinance -- so how do we get around that? Is there a
9 difference between 1979 and 2011? You tell me anywhere
10 in this United States that it is even remotely similar
11 in them years. So, how do we get around to using the
12 1979 ordinance, high density urban, that was originally
13 set out for places like Riverside, Chases Flats, where
14 you got streets, arterials. It talks about storm
15 sewers, curbs, gutters. We have to, on Freeman Creek,
16 use that ordinance to do low density rural
17 subdivisions.

18 So, how are you going to do that? The only way
19 we can do that is through a variance. We have to vary
20 the high density and see if we can get -- you can't
21 just stop use of private property. Freeman Creek has
22 numerous subdivisions, and they've all been passed.
23 This Commission has been, you know, really fair with
24 me. They've passed everything I've ever brought before
25 them. And I have probably brought 10 or 12

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1 subdivisions, and every one of them have passed. Some
2 without variances, because conditions just were not
3 addressed. I just got Freeman Creek Bench passed.
4 It's just like this subdivision. It has no 60-foot
5 easement. It doesn't border a public road. It wasn't
6 even addressed. The subdivision was passed and was
7 recorded and operational and being sold, and none of
8 these questions were addressed.

9 But let's move on from that. Hardship? Is it a
10 hardship on a developer or a landowner to tell him that
11 30 feet is enough but you got to have 60, or 18 feet is
12 enough for a low density subdivision but you got to
13 build 24. Is that a hardship? We're looking a lot of
14 money difference there. I build roads for a living.
15 So there is a definite hardship. If the County tells
16 me, yeah, 30 feet is okay but we're not going to let
17 you do it unless you get 60. 18 feet will handle the
18 traffic but we're going to make you put in 24; there's
19 a hardship.

20 And I apologize to Mr. Woolsey there when you
21 asked that question, yeah, I can sell in 20s. I wasn't
22 thinking. I can sell in 20, and that come up in past
23 hearings. I can sell in 20s. I can sell 5 20s, and
24 they can build 50 houses. There's no restrictions.
25 Don't need any road. Don't need any power. No

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1 improvements whatsoever.

2 My intent was to do a subdivision right. I have
3 10 lots. I have CC&Rs limiting one residence per lot.
4 There's a total of 10 residences allowed there. It has
5 a road maintenance agreement. So, yeah, I can sell 20s
6 and there's no restrictions. They can build houses on
7 every acre. And if that's what the neighbors wish
8 that's exactly the route I'll go.

9 As far as (inaudible) I will just answer a
10 question here that Roger Kinyon raised or one of you
11 raised. That, if you were in town, would be called a
12 flag lot. We have an easement going to it. That
13 easement only pertains to that land description. It
14 cannot go through it to another one that's
15 non-expandable, but it also is, the word in the
16 easement. I can pass -- I can pass it onto 200 people
17 if I wanted to make 200 lots, and I was allowed to,
18 which I don't. That's just to make a point. But it's
19 non-expandable. The reason it's different from the
20 1979 ordinance is when you do a checkerboard
21 subdivision on Chases Flats or Riverside you set out
22 lot, lot, lot, lot, side streets. Every acre is
23 defined into 4 or 10 lots, sold off. Some day you
24 expect the land just beyond it to be done the same way,
25 and that street extended, and extended again. That's

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1 not the case here. The case here is, that road goes to
2 that land and it's not expandable beyond in any
3 direction. So, that would answer one question.

4 As far as the Shinns' intent, Bobbi, do you have
5 the letter the Shinns wrote on the original application
6 in 2006?

7 MS. KAUFMAN: That letter is in the subdivision
8 application. They never submitted a letter for the
9 variance application. So, it is in the subdivision,
10 original subdivision request.

11 MR. GALLOWAY: Okay, well the question was asked
12 by somebody, their stand on my subdivision. They
13 stated their stand in the letter. As long as they're
14 alive they're against it. Once they pass away they
15 know it's going to be subdivided. There's a hardship
16 for you. I got to wait until they pass on. I might be
17 first. Okay.

18 You know, I have 13 hardships, but I listed a
19 couple of three in the letter. This hardship thing has
20 never been defined by the Court, what is a hardship.
21 It's never been defined. I don't think anybody here,
22 including myself or Mr. Jones, is qualified to make
23 that determination. That would have to be made in a
24 court of law. What I wish to request here tonight is,
25 just pass it like you've done twice before. Send it

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1 back to the County Commissioners and put it in their
2 court. They're elected officials. At least I have
3 some recourse. I can vote against it if I don't like
4 the decision. You gentlemen are appointed, and I don't
5 think that decision should be made here.

6 It should be -- another thing was brought up
7 about the timeframe on this subdivision. There's an
8 extreme hardship. I was 60 years old when I applied.
9 I'm 65 now. I am no closer to using my private
10 property than I was then.

11 It's been approved, stating that the County would
12 not address anything exterior of the subdivision; that
13 it was approved. The County Commissioners approved it,
14 the preliminary. We are talking about the preliminary
15 here.

16 MS. KAUFMAN: Point of order, it was sent back
17 and it was determined that it was done incorrectly.
18 That's why we are here today.

19 MR. GALLOWAY: I agree. It was determined it was
20 done incorrectly. They did have a public hearing.
21 Testimony was offered and accepted. A motion to pass
22 was made, and it passed unanimously.

23 CHAIRMAN BRUCE: Mr. Galloway, let's not talk
24 about those processes. I want to hear more about the
25 undue hardship.

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1 MR. GALLOWAY: That's undue hardship,
2 Mr. Chairman, extremely undue hardship. I don't think
3 you're qualified to make that determination. But all I
4 ask today is just pass it and send it on and let's get
5 it out in the arena where at least I have some
6 recourse. And I thank you for your time.

7 CHAIRMAN BRUCE: Are there any questions to the
8 applicant about his rebuttal from the Commission
9 members? Okay, thank you, Mr. Galloway. The hearing
10 is now closed to public comment and is now open to
11 debate and discussion by the Commission. Commission
12 may ask additional questions of all involved parties.
13 That means you can ask questions of any person out
14 there. You may ask for advice from ex-officio experts,
15 and that would be Ms. Kaufman. We can amend the motion
16 as necessary while developing a recent decision or we
17 can send it for committee review. I have a question
18 for -- Chairman Mr. Bruce -- question for Mr. Jones.

19 MR. JONES: Can you hear me from back here or
20 would you like me to come up?

21 CHAIRMAN BRUCE: That would be fine. You can
22 respond from right there. And this is in regard to
23 testimony that Mr. Ingle presented. He was talking
24 about the road having deep cuts and so on, and then he
25 presented some pictures to us that showed it to be a

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1 relatively easy sloping, rolling flat. Which is it?

2 MR. JONES: This is what I would -- I think there
3 would be cuts, as far as the snow is concerned. As far
4 as construction is concerned it's pretty level. And I
5 think most of those cuts are pretty much in place. So,
6 I understand where you think that those are
7 inconsistent statements, but I don't think that they
8 necessarily are. The construction is not going to be
9 difficult, but the end result in the wintertime that's
10 what I believe Mr. Ingle was talking about.

11 CHAIRMAN BRUCE: Okay. Thank you. Mr. Steiner,
12 do you have any comments? Mr. Brown? Mr. Ketchum?

13 MR. KETCHUM: I think, what I'm seeing here is
14 that there's a 30-foot easement to a piece of property
15 that's been platted and approved by this Board at some
16 time.

17 CHAIRMAN BRUCE: By the Commission.

18 MR. KETCHUM: By this Commission.

19 CHAIRMAN BRUCE: What we did was, as far as the
20 process is concerned, we approved the preliminary plat.
21 We can't approve a final plat. We can recommend it.

22 MR. KETCHUM: Well, I realize that.

23 CHAIRMAN BRUCE: And we've done that. We've
24 recommended it to the Board.

25 MR. KETCHUM: Then what I see is that it's highly

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1 unlikely that you're going to get a 60-foot easement in
2 order to build an adequate road, so you're stuck with
3 the 30-foot easement that you have. And the road
4 department, Rob Simon, said that an 18-foot road would
5 fit in that parameter, or that dimension. He also
6 spoke about the cuts; that they would have to changed
7 somewhat, but apparently they would fit within that
8 30-foot easement.

9 And then the other issue is the 15-foot access
10 point, which is actually just a line. International
11 Fire Code allows a restriction of 15-foot gate or
12 entrance area for subdivisions within their code.

13 CHAIRMAN BRUCE: That's interesting to note.

14 MR. KETCHUM: And so the hardship seems to be
15 that there's no practical way to accomplish the things
16 that are required by the ordinance, so I don't know --
17 I don't know of any other solution, since some of this
18 work has already been done and approved. I don't see
19 any other solutions.

20 CHAIRMAN BRUCE: Are there comments from other
21 Commission members for Mr. Ketchum? Mr. Smith?

22 MR. SMITH: The detail brought up by Mr. Ingle
23 was the Fire Code does say 20-foot width.

24 MR. KETCHUM: The Fire Code does say for roads,
25 but not gates.

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1 MR. SMITH: Well, for the road width itself, and
2 they're asking for 18-foot here. However, what I'm
3 unsure about is if the State Fire Marshal allows that
4 to be reduced either by a local fire official or by
5 another mechanism.

6 CHAIRMAN BRUCE: Mr. Woolsey?

7 MR. WOOLSEY: I don't believe that we've adopted
8 that or are bound by that in any of our ordinances, so
9 I don't know that that's pertinent.

10 CHAIRMAN BRUCE: Ms. Kaufman, can you comment on
11 that?

12 MR. SMITH: If I may.

13 CHAIRMAN BRUCE: Mr. Smith?

14 MR. SMITH: No, the County has not adopted the
15 Fire Code. However, in lack of a County Fire Code we
16 do fall to the State Fire Marshal. In Section 3, item
17 No. 4, says that we cannot violate any state laws in
18 our action, and that's in the handout we currently
19 have.

20 CHAIRMAN BRUCE: That comes out of the ordinance,
21 right?

22 MR. SMITH: No, that's straight out of ordinance
23 finding for a variance. One of the things that we
24 cannot do is violate a state law in our action.

25 CHAIRMAN BRUCE: Uh-huh (affirmative.)

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1 MR. SMITH: If that state law by the State Fire
2 Marshal says it has to be a 20 foot width, what I'm
3 unsure of is, is there a mechanism which to narrow that
4 down, or is the minimum width of any road, short of a
5 gate, 20 foot?

6 CHAIRMAN BRUCE: That's not the --

7 MR. KETCHUM: Then Clearwater County --
8 (inaudible) variance.

9 CHAIRMAN BRUCE: Mr. Ketchum? I'm just
10 identifying names.

11 MR. WOOLSEY: Mr. Woolsey here. There are roads
12 in Clearwater County that aren't 20 feet. They exist.

13 UNKNOWN PERSON: And there's county roads.

14 MR. WOOLSEY: And some of them are official
15 county roads and some of them are private roads, but
16 the county has roads of that size that do exist.

17 MS. KAUFMAN: To -- Ms. Administrator. My take
18 from the Commissioners is that the ordinance and the
19 variance is what we are deemed under. We're not -- the
20 Commission is not under the fire code. Therefore, I
21 don't know how to answer your question. Mr. Ketchum,
22 as an assist -- as fire chief for Twin Ridge do you
23 have an answer to this?

24 MR. KETCHUM: I just know -- I can't recite the
25 international fire code, but it allows for

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1 restrictions. Gated communities have them. Even
2 though interview you have a road surface that's says a
3 specific width, you can put a gate in that surface that
4 would restrict -- be restricted to the width. It could
5 be 15 feet. I can't recall right at the time. But it
6 does allow a restriction in width.

7 MS. KAUFMAN: Mr. Smith, do you want to look at a
8 book to see if it gives that determination under
9 County -- or under the local fire chief.

10 MR. SMITH: It is a question that I don't know if
11 we can resolve here. It would be, does the State Fire
12 Marshal have the authority to regulate the width of the
13 road as by in our lack of having a fire code. And if
14 that's the case are we violating a state law by saying
15 18-foot? Does it have to be 20 foot? And I don't have
16 that answer.

17 UNKNOWN PERSON: I don't either.

18 MS. KAUFMAN: I do have a copy of the
19 International Fire Code 2006 in my office. I don't
20 know if it's pertinent. Mr. Riccomini?

21 MR. RICCOMINI: According to Mr. Galloway, we've
22 already done this on other variances on other parts of
23 the county.

24 MS. KAUFMAN: Yes.

25 MR. RICCOMINI: There are other roads that have

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1 already been okayed to do this, so have we been in
2 violation at that time? Where do you start changing
3 these things? If we have an ordinance that says you
4 have to have it so wide but yet we're varying
5 everything down, so we don't really have a set --
6 there's nothing you can put your teeth into to start
7 changing all this stuff, because we always go back to,
8 okay, it was done then, let's do it now. That's the
9 variance process. So, we've already done it so why are
10 we arguing over whether it should be 30 feet, 15 feet,
11 25 feet. We've done it before. I don't understand.

12 CHAIRMAN BRUCE: Well, the thing is, though, is
13 that we have to analyze each application on its own
14 merit. That's the thing we're confined to. And, you
15 know, as far as this undue hardship, I'm speaking from
16 what I have heard here as testimony. If the Shinns
17 will not sell property to Mr. Galloway so that he can
18 achieve our standard, the 60-foot easement, then he's
19 confronted with an undue hardship. It's a barrier he
20 can do nothing about.

21 UNKNOWN PERSON: Uh-huh (affirmative.)

22 CHAIRMAN BRUCE: Is there agreement there, or if
23 I'm wrong, somebody correct me on that. Mr. Nation?

24 MR. NATION: That's my opinion also. I think
25 because of the adjacent landowner -- we won't mention

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1 any names but just say landowner adjacent -- the
2 30-foot restriction will likely remain and will not be
3 increased.

4 As far as the ordinance goes, strictly applying
5 that ordinance is, indeed, a hardship in this
6 particular case. And the solution to that would be to
7 go to 20-acre or more lots which would increase the
8 density, could possibly increase the identity out there
9 making the situation even worse. So, by at least
10 attempting to limit the growth of the subdivision --
11 which is what the ordinances, I think, were intended to
12 do to some extent, right, for the county, is to kind of
13 regulate the growth.

14 CHAIRMAN BRUCE: That's what your zoning
15 districts do, they establish your density.

16 MR. NATION: I'm convinced that Mr. Galloway is
17 at least trying to comply with the intent of the
18 ordinance as far as regulating the growth of
19 development but he does, indeed, need the variance in
20 order to proceed with that type of development. And if
21 a variance is not granted, fine, we'll just go to
22 20-acre or more lots. Throw a bunch of houses up there
23 and we'll see what happens later on. So, because of
24 the neighbors and the confined restriction of the
25 easement and trying to get away from -- trying to

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1 comply with an ordinance that, perhaps, deals with an
2 urban subdivision I think those are the hardships
3 involved in this particular instance. And that's what
4 we've done all along with this Commission. We've taken
5 each application on its own and applied variances in
6 one situation to another.

7 CHAIRMAN BRUCE: And that's a tool that the
8 ordinance provides.

9 MR. NATION: Right.

10 CHAIRMAN BRUCE: That allows us to do that for
11 those unusual circumstances. But Mr. Smith has a point
12 that I think we have to be aware of: Are we violating
13 a state law with the width at 18 instead of 20?

14 UNKNOWN PERSON: Better hope not or a lot of
15 people are going to be paying a lot of money getting
16 their roads fixed, and I'm going to be one of them.

17 CHAIRMAN BRUCE: Mr. Ketchum, you're supposed to
18 be our resident expert.

19 MR. KETCHUM: I don't have the information that I
20 need to have, but there is allowances for -- they
21 recommend 20-foot -- the International Fire Code
22 recommends 20 foot minimum width, but you can vary
23 that, and we're in the process of doing that on one of
24 our subdivisions, too, where it's impossible. And I
25 think there's another subdivision down on Peck Grade

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1 where it's impossible to make the road wider so they
2 have a lot of variance to make it allowed to be
3 narrower, even though the fire code requires that it be
4 20 feet, it's impossible to do. So, it is allowable.

5 CHAIRMAN BRUCE: Mr. Bruce, a question to
6 Mr. Ketchum. If Ms. Kaufman were to bring a copy of
7 that fire code up here would you be able to find that
8 information for us post haste?

9 MR. KETCHUM: Probably.

10 MS. KAUFMAN: I have a question, Mr. Bruce.
11 Mr. Smith, are you referring to in the ordinance that
12 such variance will not violate the provisions of the
13 Idaho Code? So, if Mr. Ketchum is saying that within
14 the fire code that it actually allows variances,
15 therefore, if they allow variances we are not breaking
16 state law.

17 MR. SMITH: No, it's moot. And then also
18 Clearwater County hasn't adopted the International Fire
19 Code.

20 MS. KAUFMAN: And we are judging this application
21 based on the ordinance, therefore, so I --

22 CHAIRMAN BRUCE: Mr. Smith, your response?

23 MR. SMITH: There's a question worth delving
24 into. Like I said, my question was: I don't know if
25 there's a mechanism within the State Fire Marshal

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1 statute that allows for a changing of that width,
2 either locally or not. So, it was a question to ask.
3 Are we, at 18-foot, are we too narrow? I don't have
4 that answer. Now at this point I don't think anybody
5 does. It was not picked up by legal counsel at the
6 time that they drafted to remand it back to us. So,
7 it's really not something that's put on before us as a
8 correction. If it is a correction, I'm sure it's
9 probably going to be coming back to us again.

10 MS. KAUFMAN: I guess I have one more question.
11 I send the agendas to all of the public subdivisions
12 which includes the fire chiefs. I feel if Mr. Howard
13 Weeks is the Evergreen Fire Chief and he had concern
14 about this and thought we were in violation, would he
15 have not submitted a concern?

16 UNKNOWN PERSON: Should have.

17 MS. KAUFMAN: Because it says that he has that
18 full -- he has that full jurisdiction, say, same as
19 Mr. Ketchum. I believe we're in the whole realm of our
20 capacity to hear this, but I'm not a voting member
21 either. It's just my ex-officio opinion.

22 CHAIRMAN BRUCE: Okay, Mr. Nation, further
23 comments?

24 MR. NATION: No.

25 CHAIRMAN BRUCE: Mr. Riccomini?

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1 MR. RICCOMINI: No.

2 CHAIRMAN BRUCE: Any follow-up, Mr. Smith?

3 MR. SMITH: No.

4 CHAIRMAN BRUCE: Mr. Woolsey?

5 MR. WOOLSEY: No. Just a quick -- I was trying
6 to listen to everything in the context of the guidance
7 that the Board sent back, and it was my impression that
8 they were seeking to have additional facts added into
9 the record. So -- and that was their reason for
10 remanding it was they thought there was inadequate
11 testimony or facts presented about those items. I
12 think it's probably in their jurisdiction, which it
13 will be, to do, you know, to review this and submit it.
14 And I tend to agree with your take that things in my
15 mind seem like there are some hardships that the
16 property owner has no control over, and I would
17 classify as undue hardships the same as what Mr. Nation
18 has mentioned. So, my take is basically to --

19 CHAIRMAN BRUCE: Could you verbalize that for the
20 record, please?

21 MR. WOOLSEY: Well, I think the ordinance -- they
22 would be -- that there is not an opportunity for the
23 applicant to get additional easement to meet the letter
24 of the -- the letter of the code, you know, through his
25 best efforts or not. Therefore, we are imposing a

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1 hardship on him to require something that our own
2 ex-officio member, Mr. Simon, said would be an adequate
3 road to service the homes in that area. So, we're
4 asking him to comply with something that our own
5 officials say it's okay to do what he's proposing. I
6 would -- you know, I'm inclined to reapprove it with
7 the additional facts added to the record and send it
8 back to the Commissioners for their final judgment.

9 CHAIRMAN BRUCE: Okay, I want to go around the
10 horn again here, if you will, please, each of you to
11 make a comment based on what Mr. Woolsey just
12 presented. Mr. Smith?

13 MR. SMITH: A 30-foot easement would not
14 adequately allow a 24-foot roadbed on it allowing for
15 any tow or slope to encroach into that. It would not
16 allow for any maintenance on that road surface beyond
17 basically the 3 feet on either side of the 24. It's
18 not reasonable to have a 24-foot roadbed on a 30-foot
19 width easement.

20 CHAIRMAN BRUCE: Okay, but let's talk about the
21 undue hardship factor. Mr. Galloway was dealt a hand
22 of cards that was a 30-foot easement. If I'm
23 interpreting what I have heard in this hearing so far
24 is that there is no practical way for him to increase
25 the width of that easement. If there's anybody else

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1 here that thinks I'm wrong, off base, jump in so we can
2 straighten it out.

3 UNKNOWN PERSON: That's what I heard.

4 CHAIRMAN BRUCE: So if he can't expand that
5 easement to what the ordinance wants, which is 60 feet,
6 then that would be one of those circumstances that
7 would be impracticable or unreasonable, in my opinion.
8 Not talking about finished road width now. All we're
9 talking about is -- not the cost of the road. We don't
10 care about that. What we care about, can he expand
11 that easement if he had a way to expand that easement?

12 UNKNOWN PERSON: There's no opportunity to expand
13 the easement.

14 CHAIRMAN BRUCE: So that would be undue hardship,
15 do you agree?

16 MR. SMITH: No.

17 CHAIRMAN BRUCE: Don't agree?

18 MR. SMITH: No. Purchase a piece of property
19 with a 30-foot easement. That was a limiting factor in
20 what he would be able to do in the future of that piece
21 of property. It would be different if we changed our
22 codes in some fashion. I would agree that there's
23 probably a need and a necessity to look at our zoning
24 ordinances and change those to allow for low density
25 and for some of the rural areas of our community to be

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1 able to be developed. But to say that this in itself
2 is a standalone undue hardship; he purchased it with
3 that knowledge. It was not forced upon him at a later
4 date.

5 CHAIRMAN BRUCE: Mr. Galloway, I have a question
6 for you. When did you purchase that property?

7 MR. GALLOWAY: 1985.

8 CHAIRMAN BRUCE: In '85. Okay, with that
9 considering 1985 how many years ago was that? 25
10 years, 26 years? Mr. Riccomini?

11 MR. RICCOMINI: I kind of concur with
12 Mr. Woolsey, that because he only has a 30-foot
13 easement it would be -- and he can't obtain a greater
14 easement than that to build a road -- then that is
15 undue hardship.

16 CHAIRMAN BRUCE: And, Mr. Nation, you've already
17 stated your point of view. Mr. Ketchum?

18 MR. KETCHUM: Yeah, that's my point of view.

19 CHAIRMAN BRUCE: Mr. Brown?

20 MR. BROWN: I agree with that. Mr. Galloway is
21 just asking to let him work with what he was dealt
22 with. That's a 30-foot easement. He didn't know 25
23 years ago this was going to happen, the neighbors won't
24 let him go 60. I have no issue with it -- granting a
25 variance.

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1 MR. STEINER: I don't either.

2 CHAIRMAN BRUCE: Mr. Steiner?

3 MR. STEINER: I agree.

4 CHAIRMAN BRUCE: Okay. Ms. Kaufman, from the
5 standpoint of other undue hardship factors what do we
6 have to establish for what the Board of County
7 Commissioners wants?

8 MS. KAUFMAN: Well, it says: Are those special
9 circumstances such that failure to grant variance would
10 cause an undue hardship to the developer? Well, if he
11 can't develop his property into those lots that could
12 be deemed an undue hardship, and would strict
13 compliance with the requirement of this ordinance
14 result in inhibiting the achievement of the objectives
15 of the ordinance or nullify the purpose of the
16 ordinance or the Comprehensive Plan. There's points in
17 the comp plan that state that we would like to keep the
18 ruralness of the county. The facts that you have all
19 discussed -- and in my staff report you have an
20 ex-officio member, Rob Simon, stating that the line of
21 site is safe. That it's not an unsafe road. So, I
22 guess that would be a special circumstance; that if we
23 didn't grant a variance because you can't put 24-foot
24 road in, a road supervisor is saying an 18-foot wide
25 road is safe, that could be an undue hardship to that

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1 developer. And I do believe that cost could come into
2 play.

3 CHAIRMAN BRUCE: Generally costs are not
4 considered to be a factor, though, as far as undue
5 hardship is concerned.

6 MS. KAUFMAN: Clayne didn't add it, but there is
7 a case, Ada County vs. Blaha, and there was a deem
8 about cost, but it's not always out there.

9 CHAIRMAN BRUCE: Our comprehensive plan, which is
10 the foundation for our ordinances tells us that as far
11 as general planning goes, that we have to provide for
12 the protection of private property rights and that we
13 need to preserve the rural nature of development that
14 has historically occurred in Clearwater County. And
15 from the standpoint of Mr. Galloway, I would say that
16 he's subdividing at 5-acre minimums, that's asking that
17 he be given more lots. So, he's maintaining that rural
18 environment, at the same time he has to deal with the
19 difficulty in being able to access it.

20 The very top item under property rights planning
21 policies -- this is from our comp plan now -- uphold
22 property owner's rights to enjoy the use of their
23 property in pursuit of their own best interests, both
24 social and economic.

25 There's other information in this comprehensive

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1 plan that also identifies where the ordinances have to
2 have flexibility to be able to deal with situations
3 like we're being presented this evening. And, of
4 course, I think our subdivision ordinance meets that
5 intent in providing a section that deals with
6 variances: My opinion.

7 MR. KETCHUM: I have a question for Mr. Bruce.

8 CHAIRMAN BRUCE: Mr. Ketchum?

9 MR. KETCHUM: Did we talk about or did we throw
10 out the public road/private road?

11 CHAIRMAN BRUCE: That's not a factor. It tells
12 us in here that the board --

13 MR. KETCHUM: It's not a factor, then.

14 CHAIRMAN BRUCE: The board --

15 MR. KETCHUM: Eliminated that from, okay.

16 CHAIRMAN BRUCE: Yeah, from our consideration.
17 Is there any other debate or discussion? If there's no
18 further debate or discussion, the Chair puts the motion
19 to a vote. The question is: Shall the Commission
20 reapprove ZV2011-2, a variance request by Ed and Carole
21 Galloway? Those in favor say aye.

22 (Aye in unison.)

23 CHAIRMAN BRUCE: Those opposed say no. (Nothing
24 audible.) The ayes have it. Ms. Kaufman, do we have
25 sufficient information now? Have we --

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1 MS. KAUFMAN: I believe so.

2 CHAIRMAN BRUCE: Before we close this hearing I
3 want to make sure.

4 MS. KAUFMAN: I believe that all of the
5 stipulations as guidance that the Board requested the
6 Commission to consider they've done, along with the
7 testimony provided and the applicant's written
8 correspondence.

9 CHAIRMAN BRUCE: I want to thank each and every
10 one of you for participating in this hearing. And from
11 the standpoint of appeal, Mr. Jones, I -- you can --

12 MR. JONES: I am aware of those rights.

13 CHAIRMAN BRUCE: -- touch base with Ms. Kaufman
14 on --

15 MR. JONES: Appreciate it.

16 CHAIRMAN BRUCE: And, of course, that isn't just
17 narrowed down to Mr. Jones. Anybody out there can do
18 an appeal.

19 MR. JONES: Excuse me, Chairman Bruce. I think
20 your point is well taken. Perhaps you might want to
21 explain that for other people in the audience what the
22 appeal rights might be.

23 CHAIRMAN BRUCE: So that I can tell you exactly,
24 let me check.

25 (Audio ended.)

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(Hearing concluded at 8:15 p.m.)

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CERTIFICATE OF TRANSCRIPTION

The undersigned does hereby certify that he
correctly and accurately transcribed and typed the foregoing
transcript from the TAPE RECORDING of the hearing which
was RECORDED on the 15th day of August, 2011, in the
above-entitled action or proceeding.

Dated this 30th day of September, 2011.

Keith M. Evans, RPR, CSR NO. 655
Court Reporter

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1 CLEARWATER COUNTY COMMISSIONERS' MEETING
2 VARIANCE ZV2011-2
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4 OCTOBER 24, 2011
5 NOVEMBER 7, 2011
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25 TRANSCRIBED BY: KEITH M. EVANS, RPR, CSR NO. 655

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1 BE IT REMEMBERED that the above-entitled matter
2 came on for hearing before the Clearwater County Commissioners
3 October 24th, 2011, in the Commissioners' Room of the Clearwater
4 County Courthouse, City of Orofino, County of Clearwater,
5 State of Idaho.

6 (Thereupon the following oral proceedings
7 were had as follows, to-wit:)

8 CHAIRMAN EBERT: Here today it's the -- I believe
9 it's the 24th of October about seven minutes after
10 10:00. We're here for an appeal hearing of the Ed and
11 Carole Galloway subdivision appeal brought forth by the
12 Shinns represented by Garry Jones. With the appeal
13 hearing we will take testimony from parties with
14 standing, and the testimony will be somewhat restricted
15 to what is on the record previous to this meeting here
16 today. In other words, we will not accept new
17 evidence. They'll be an opportunity for each side.
18 First the -- my understanding is the appellate goes
19 first, then the applicant, and then there's chance for
20 rebuttal for each side. Mr. Jones, you think I've
21 missed anything?

22 MR. JONES: No, I don't think so.

23 THE COURT: Okay. So with that we'll let you
24 have the floor.

25 MR. JONES: Just a matter of -- is Ms. Galloway

1 recused again?

2 THE COURT: Ms. Galloway is a party to the
3 application to begin with so this would be with two
4 commissioners. And, Ms. Galloway, you have recused
5 yourself, Carole?

6 MS. GALLOWAY: (Inaudible.)

7 THE COURT: I think this gets pretty simple today
8 so probably won't take too long. If you recall in the
9 end of July you ordered the P & Z to have a hearing
10 with specific instructions to review and identify
11 whether or not there was a undue hardship. What
12 happened after that immediately prior to the hearing is
13 that -- I assume you're aware of this, but your staff
14 met with Mr. Galloway, apparently, and the county
15 attorney, and set forth certain kinds of facts that
16 would demonstrate an undue hardship. This staff report
17 was not something that we had received prior to the
18 hearing. We heard somewhat afterwards. And in it one
19 of the things that they mention the staff report that
20 Rob Simon who did not appear at the second hearing said
21 that the roads that Mr. Galloway was asking for were
22 adequate. I think that's important. And then there
23 was -- staff made a report, and the staff made that
24 report and gave it to the P & Z. And the staff made a
25 conclusion that there was undue hardship shown and

1 recommended passage. And the only thing that does
2 occur to me, and perhaps this is the way it's done all
3 the time, is that the fact for-ending board is really
4 the P & Z, and I think they get influenced by a staff
5 report in a situation where there's just -- there's
6 additional information that hasn't come up yet in the
7 hearing and they -- and they then take the staff report
8 as actual part of the hearing testimony. It just
9 strikes me that it's a procedure that is not exactly in
10 favor of the appellant. All we've asked for in this
11 whole thing is some sort of a -- is fairness
12 recognizing that Mr. Galloway has certain rights in his
13 property, and with everybody recognizing that the
14 Shinns also have some rights. And I think that gets
15 forgotten somewhere along the line in this. When Mr.
16 Galloway at the hearing itself testified -- he didn't
17 offer any testimony initially. He included his letter,
18 which had been read into the record by Bobbi Kauffman
19 already. And his letter, if you read the transcript,
20 is very conclusive. It makes a bunch of conclusions.
21 It says that we have an ordinance, but it's one that is
22 really directed in a certain -- not directed to this
23 type of subdivision. It's very old, and it really has
24 no bearing on this. None of which is anything other
25 than his opinion. And the fact of the matter remains

1 that we do have an ordinance, and the ordinance does
2 have to be followed. Mr. Galloway had said that the
3 ordinance was granted or originally passed in 1975 and
4 directed for -- to large high density subdivisions. I
5 think it's important to notice that it was adopted in
6 1975, but it's also been amended five times since then,
7 at least five. And there have been ample opportunity
8 to change the ordinance to address what Mr. Galloway
9 would refer to as lower density subdivisions. It
10 hasn't been so we have this is, and this is what we
11 need to follow. And I think it's also important to
12 understand, and I'll get to this later, that this
13 ordinance was in effect at the time Mr. Galloway bought
14 the property -- his property. And apparently Mr.
15 Galloway did not have access to his property at the
16 time that he bought it, and so it's necessary for him
17 to get an easement. And he got an easement and it was
18 30 feet wide. When he got that easement at that time
19 it did not comply with the ordinance. So starts out
20 with no access to property, then he gets an easement
21 and it's still not adequate for subdivision purposes.
22 The only testimony that actually took place at that
23 hearing had to do with -- that had to do with hardship
24 had to do with would it be possible for him, Mr.
25 Galloway, to go ahead and get more ground. And it kind

1 of got turned around, I think if you get this, that all
2 of the sudden the reason that we're here at all today,
3 back at the hearing, was because the Shinns wouldn't
4 expand Mr. Galloway's rights. And the Shinns all the
5 sudden become the bad guys in this picture. There's
6 nothing that requires them to expand their -- what
7 they've already granted for -- what their predecessors
8 in title who granted. They don't have to do that.
9 Matter of fact, when they buy that property they have a
10 right to rely on what the status of the property is at
11 the time they buy it. And they would know -- they
12 would have constructive notice that there's a 30-foot
13 easement, and they would know that the county
14 subdivision ordinance at that time -- may not have
15 actual notice, but they have constructive notice
16 required 60-foot access. They have rights to rely on
17 that. Now, asked in quite a few different ways would
18 you expand any other way to get there, but it boiled
19 down to that the only hardship that was testified to at
20 that second hearing was Mr. Galloway's inability to get
21 more than 30 feet. I want to read something to you,
22 first of all. And this is from a State of Idaho case.
23 And it's not exactly the same thing, but I think you'll
24 see where I'm coming from.

25 CHAIRMAN EBERT: What's the --

1 MR. JONES: I'm going to give it to you right
2 now. It's Dawson Enterprises vs. Blaine County. It's
3 98 Idaho 506. And in that case the basic facts were
4 the plaintiff, the one who brought the lawsuit against
5 Blaine County, bought a piece of property that was
6 zoned a certain way. And when they bought it they knew
7 it was zoned that way. And they tried to get
8 additional zoning -- change the zoning, and they were
9 unable to. And they went in saying that was a
10 hardship, and they should get it changed. And one of
11 the things that the Idaho Court did is they adopted
12 something from another court. This is what I wanted to
13 read to you. And this is in the other case, but this
14 is mentioned in the Idaho case. Nopro, which is an
15 earlier plaintiff, land investment was made in full
16 knowledge of the zoning limitations. It took the
17 calculated risk that it could break the zoning use
18 barrier and thereby double the profit from its
19 investment. Having been denied the means by which this
20 might be accomplished, it now claims hardship. If a
21 hardship exists under the facts of this case, and we
22 hold that it does not -- and we hold that it does not.
23 I'm reading this. We hold that it does not. It was
24 incurred voluntarily by the choice of Nopro and was
25 self-inflicted. Now, that's a different set of facts.

1 It's also dicta. It was just something that was noted.
2 But it gives a flavor of what the Idaho Supreme Court
3 says. When Mr. Galloway bought this property it did
4 not comply with the zoning ordinance. So now he bought
5 it -- he didn't have to buy this. He goes ahead and he
6 buys it. He assumes whatever hardship -- to use that
7 word -- comes with it, but it's not the hardship that
8 we're talking about here. The limitations that come
9 with it is a better way of saying it. He bought it
10 with the limitations that it couldn't at that time be
11 subdivided. And now he's come to the County and he
12 said, okay, I took this risk when I bought this
13 property, now you bail me out. Let me go from -- as
14 it's pointed out in here what we're really talking
15 about is his right to go ahead and have five 20-acre
16 parcels or 10, 10-acre parcels that we're talking
17 about, double his profit.

18 The position that I take, and I will continue to
19 take, is that this is not a hardship in the traditional
20 sense. This is one that Mr. Galloway took on himself.
21 One of the commissioners, I think Mr. Smith, started to
22 say this, and matter of fact it's in the testimony
23 that -- page 63, starts on page 62. I would agree that
24 there's probably a need and a necessity to look into
25 our zoning ordinances and change those to allow for low

1 density and for some rural areas of our community to be
2 able to be developed. But to say that this itself is a
3 standalone undue hardship. He purchased it with that
4 knowledge. It was not forced upon him at a later date.
5 And he had it, but he didn't stay with it. And that is
6 what we're saying to you. Mr. Galloway bought this,
7 and it's not a hardship. A hardship should be
8 topography, some reason why you can't build on this.
9 So it just boils down that he doesn't have enough land
10 to do what he wants.

11 Now, I would also point out to you that there
12 were two variances that were applied for. One was
13 60-feet down to 30, and that's primarily what this
14 talks about. The other was 24-foot surface to 18-foot.
15 There was absolutely no testimony about that at the
16 public hearing. Mr. Galloway's letter refers to the
17 additional cost of a 24-foot roadway versus 15-foot
18 roadway. But there was no discussion by the
19 commissioners. Matter of fact, the chairman of it said
20 that cost should not be factor. That's what he said in
21 his -- when they were discussing this. So the only
22 matter that they determined this hardship on was that
23 Mr. Galloway is unable to get additional ground. And
24 so if that is the hardship -- if that's the hardship,
25 then -- and you feel that is a hardship, then you go

1 ahead and you affirm the variances. But if you feel
2 that that's a hardship that is not a typical one under
3 the ordinance, then you to deny these. And when you
4 deny the variance remember the two, and you tell me
5 where are there any facts whatsoever for the second
6 variance to be granted. There isn't any. There's just
7 no facts at all. I mean, there's assumptions that they
8 can't do it, but nobody said anything about why should
9 it go from 24 to 18. And you might think I'm being
10 somewhat contrary saying I don't think there should be
11 a variance at all now I want it to be wider. But the
12 point is if we're going to follow the law you follow
13 the law, and your law is your ordinance and your
14 ordinance is in effect and it should be followed. And
15 I don't believe that this is the type of variance that
16 is contemplated by the ordinance. And I recognize all
17 the other factors that they talked about, and I
18 recognize that Mr. Galloway says this is a hardship on
19 me. Well, the hardship on him, when he's talking about
20 the time this has taken, that's not a hardship under
21 the statute. If it's taken five years to get here they
22 don't talk about time. They're talking about the
23 topography or the land itself is what is creating the
24 hardship. And it's our position to you that he came
25 into this. He knew what he was getting into, or he

1 should have known what he was getting into, and it's
2 not the county's job to bail him out. He can still use
3 this property. He can still sell five 20-acre parcels
4 without a variance. He won't have a subdivision for
5 that. That's what he should be limited to. So that is
6 our position, and it's an important position. And I
7 will just say to you, and this is just a fact. It's
8 not a threat or -- just going to tell you what's going
9 to happen. This is an important decision. It's an
10 important decision, I think, not only for Nez Perce --
11 or excuse me, Clearwater County, but it's also the
12 State of Idaho.

13 (Apparent skip in the recording.)

14 MR. JONES: There's no case law in Idaho on a
15 self-inflicted type hardship and whether that
16 constitutes one. And we are going to find that out.
17 So either way that's going to -- and I'm sure Mr.
18 Galloway would be adamant in pushing forward his
19 position. So what we're left with right now is that
20 you have to make this decision on these variances, and
21 then as I understand it if you affirm those variances
22 then they'll be further hearing for the subdivision
23 ordinance itself because I don't think -- excuse me,
24 for the subdivision itself because I don't think
25 there's anything else to hold it up. In the meantime,

1 if you rule against us that forces us to get some real
2 case law on this particular issue. So either way --
3 but I feel -- it's our position that clearly this is
4 not -- this is not a hardship as contemplated by the
5 statute; and secondly, there is just absolutely nothing
6 for the granting of the second variance. There's no
7 facts whatsoever. So that's all I have.

8 CHAIRMAN EBERT: Okay. You had referred to a
9 staff report. Do you happen to have that? Do you have
10 a date or something to reference it?

11 MR. JONES: Thank you for the absolutely
12 excellent organization from Bobbi I can find it. She
13 can probably find it faster but -- staff reports. I
14 have it. It's -- the date of it is August 11th,
15 2011.

16 CHAIRMAN EBERT: Which page? I think we have the
17 same book.

18 MR. JONES: It's under note No. 10. I might have
19 organized -- you probably did what you were told and
20 put it at the back. I put mine at the front because it
21 was current.

22 CHAIRMAN EBERT: Bobbi took care of all of ours.
23 What was the date?

24 MR. JONES: August 11th. It was four or five
25 days prior to the hearing.

1 CHAIRMAN EBERT: Okay. Start from the back.

2 Okay. So I'm just trying to understand what I'm
3 looking at here is a staff report for the building and
4 planning. This went to the planning and zoning
5 commission?

6 MR. JONES: Yes.

7 CHAIRMAN EBERT: All right.

8 MR. JONES: And I think probably in fairness to
9 everybody it's an attempt to bring everything
10 up-to-date because this has been going on for a long
11 time, and to have some summary of where everything is.
12 But your direction was to have a hearing, and at the
13 hearing, I'm telling you that the only testimony was --
14 well, there's a little bit more, but primarily what
15 they were focused on was inability to get different
16 property.

17 CHAIRMAN EBERT: Okay. Ed is not here. Carole?

18 MS. GALLOWAY: Yeah, just a few things.

19 CHAIRMAN EBERT: Excuse me, Carole. Carole
20 representing Galloways. And Carole, again, has recused
21 herself. So your opportunity. Your floor.

22 MS. GALLOWAY: Okay. Well, the P & Z, I thought,
23 has went over this several different times that this
24 has been brought back to them. And I think that they
25 made it very, very clear that they proved that there

1 was undue hardship. That was the whole goal of the
2 whole thing. And the only thing -- they still went
3 over. They passed. You talked about Mr. Smith brought
4 up that issue. Did Mr. Smith vote for our -- to pass
5 our subdivision?

6 MR. JONES: You're addressing them, not me.

7 MS. GALLOWAY: He did. He passed it. He voted
8 for it. It was unanimous. So, you know, what he
9 brought up is what we have probably all been talking
10 about. Maybe we should be back in there looking at
11 some of these old things and clarifying them for future
12 so we do not have to go to P & Z over and over. And if
13 not everybody has to get all these different variances.
14 But he voted for it, you know, and I assumed that he
15 would be willing at some point, you know, start
16 cleaning up and bringing up all of our zoning
17 ordinances up to snuff what he thought so it would
18 clarify. That was the only thing. P & Z did a great
19 job. They are volunteers, and I think to take this
20 back even a third time was just a ploy to stall, stall,
21 stall, stall. And so, yeah, we were more than happy
22 with how the P & Z, who really is the ones that look
23 into this and know all the ordinance and laws and that
24 they felt that we should be able to go forward, then, I
25 don't see why the Board of Commissioners feel like, you

1 know, you should hold it up any longer and just go with
2 the P & Z.

3 CHAIRMAN EBERT: Would you care to rebut? Any
4 rebuttal either side?

5 MS. GALLOWAY: Well, I was just asking about, you
6 know, Mr. Smith brought that up at the last minute. If
7 he felt that why would he vote for a subdivision. It
8 was overwhelmingly. You know, it was going to pass.
9 So, you know, why did you think that he would have
10 voted it down if he felt so strongly about that,
11 Mr. Jones?

12 MR. JONES: You're talking to me. Do you want me
13 to address the board?

14 CHAIRMAN EBERT: Are you done, Carole?

15 MS. GALLOWAY: Yeah. Yeah, I was just curious.

16 CHAIRMAN EBERT: You have an opportunity to
17 rebut.

18 MR. JONES: Yeah. I recognize what the board
19 did, the P & Z. I know what they did. I think that
20 they have been looking -- this is just my opinion. I
21 think they wanted this off their desk for some period
22 of time. But the point is they still have to follow
23 the law in doing it, and I'm suggesting to you and
24 urging you to say that they're still not getting it.
25 This is not a proper hardship. I don't care if they

1 voted for it or not. It's not a proper hardship. It's
2 one that was created by -- not created, but he bought
3 into it, and he can't get bailed out, and that's what
4 we're saying. I recognize everyone is trying to go
5 through all the rest of it. The law is what the law
6 is. The ordinance is what the law is, and this is not
7 a hardship. I don't care how they voted, that's why
8 we're here today. That's our position.

9 CHAIRMAN EBERT: All right. Fair enough. Well,
10 is there anyone else to testify? For the record there
11 is no other people here to testify in this matter.

12 MS. GALLOWAY: You know, maybe one more thing.

13 CHAIRMAN EBERT: Is it rebuttal?

14 MS. GALLOWAY: Yeah. When we bought that
15 property we had, what you would call (inaudible)
16 agreement.

17 MR. JONES: This is factual. This is factual.

18 CHAIRMAN EBERT: Let her --

19 MS. GALLOWAY: So that -- and then, you know, we
20 realized he was elderly that we had better get it wrote
21 down and get an easement in writing, you know. And
22 that -- at 30-feet was what everybody was going for and
23 that was adequate so --

24 CHAIRMAN EBERT: Okay. I'm going to end the
25 testimony. You got a question?

1 COMMISSIONER LEACH: I got a staff question.
2 CHAIRMAN EBERT: Okay.
3 COMMISSIONER LEACH: They bought the property in
4 '85. In '85 was the ordinance requirement 60-foot
5 right-of-way at that time?
6 MS. KAUFFMAN: For an access road for a full
7 platted subdivision.
8 COMMISSIONER LEACH: Okay.
9 MS. KAUFFMAN: For a simple subdivision --
10 COMMISSIONER LEACH: I'm just trying to verify.
11 MS. KAUFFMAN: Yeah. For a simple subdivision
12 (inaudible) access road. There were no restrictions,
13 and they could have -- they could have subdivided down
14 to one-acre lots, simple subdivision process.
15 COMMISSIONER LEACH: Right. Okay. I just wanted
16 to make sure. That's the one thing I didn't know.
17 CHAIRMAN EBERT: Would you clarify what you just
18 said again, please. Simple subdivision they could have
19 went to one acre, how?
20 MS. KAUFFMAN: Well, they could have done --
21 because you could use that process every 10 years.
22 CHAIRMAN EBERT: Okay.
23 MS. KAUFFMAN: So they could have done simple
24 subdivisions, and at the time until 2006, I believe,
25 there were no -- they just had an all-weather access

1 road. There were no distinct set easements or
2 (inaudible) for a simple subdivision.

3 CHAIRMAN EBERT: I got you. Not in one
4 application but several, yeah.

5 MS. KAUFFMAN: So some things could change there.

6 CHAIRMAN EBERT: Any more questions? Well,
7 again, like I said at the last appeal hearing, my goal
8 in this is to get it right. And, quite honestly, you
9 know, I recognize -- I recognize the law. I recognize
10 our ordinances as laws, and I recognize the rights of
11 the Galloways and the Shinns. And, you know, my goal
12 as chairman of this board is to get this -- whatever
13 decision we make fits within the legal framework is
14 with -- is within our discretion, you know, have been
15 done properly, and it's something that -- particularly
16 in this matter it's a goal of mine and something that I
17 try to pride myself on. Whether we'll be able to
18 accomplish that or not possibly will remain to be seen.
19 You know, these things are always quite a bit more
20 complicated than, perhaps, they should be. My
21 understanding is we're not -- we're not so much charged
22 with reviewing what their judgment was, but we are
23 charged with -- and I'm talking about Planning and
24 Zoning Commission. We're reviewing whether they had
25 adequate information to arrive at that judgment. We

1 don't substitute our judgment for theirs. We just
2 determine if they had enough to -- if their decision
3 was in the mind of a normal person would be, you know,
4 arguably justified, and to see if they have followed
5 the legal process. That's my understanding of it.
6 Whether or not it's a hardship I don't think it's -- I
7 don't think we've trumped their judgment. I just think
8 we need to see if they had enough to make that
9 judgment. Does that make sense?

10 COMMISSIONER LEACH: Uh-huh (affirmative).

11 CHAIRMAN EBERT: That's how I understand this to
12 work.

13 COMMISSIONER LEACH: That's what I understood,
14 too, is according to our attorney we weren't supposed
15 to substitute our judgment for theirs. I think we're
16 on the same page there.

17 CHAIRMAN EBERT: The first time we did this, you
18 know, it was pretty sketchy as to whether there was any
19 evidence for them to base their judgment or not. So
20 error on the side of caution because we know this is
21 contentious and has the potential for further
22 litigation. You know, in order to insure that we were
23 doing it properly we sent it back. Then we had the
24 hearing set for the same day that the transcript
25 arrived, so we had to continue the hearing on until

1 today. So now I guess we decide. I don't know. I
2 don't know that I'm ready to do that today, but what
3 are your thoughts? I mean, I think I have some review.

4 COMMISSIONER LEACH: You still have some
5 questions?

6 CHAIRMAN EBERT: Mostly as far as procedure and
7 making sure it's done right. But I'm interested in
8 what you have to say.

9 COMMISSIONER LEACH: Well, I mean, we can
10 certainly review it again. You know, I'm of the same
11 mind that you are. I want to do this correctly, you
12 know. I don't want to make a mistake that fouls things
13 up down the road. If you have legitimate procedure
14 questions, you know, maybe we need to have those
15 answered. I don't know what the questions are but --

16 CHAIRMAN EBERT: Well, I would like to read the
17 transcript again because, you know, in light of what
18 Mr. Jones has said, see if there was adequate evidence
19 to make that determination that they made. I would
20 also like to look at this case he referenced, and then
21 I would like to reread the staff report. And then
22 probably make time to sit down with Clayne just to go
23 over the procedure to make sure that we've gotten it
24 right or as close to right as we can possibly do it.

25 COMMISSIONER LEACH: I'm okay with that. In the

1 name of trying to get it correct or as correct as
2 possible. I mean, I think everybody has been patient
3 for as long a span of time.

4 CHAIRMAN EBERT: Well, they have been patient for
5 a long time, and I understand the frustration and
6 sometimes things take a painfully long time. But, you
7 know, that's how -- sometimes that's how the process
8 is. And hopefully when you get through to the other
9 end of it you've done the right thing. Not everybody
10 is going to be on what the right thing is.

11 COMMISSIONER LEACH: Sure.

12 CHAIRMAN EBERT: So -- but I would make the
13 motion that we set this for a decision in two weeks.

14 COMMISSIONER LEACH: The 14th; is that right?

15 CHAIRMAN EBERT: No, the 31st. It would be
16 November 7th.

17 COMMISSIONER LEACH: Okay. Oh, that's right.
18 I'll second that.

19 CHAIRMAN EBERT: That's not Veterans' Day or
20 something, is it? We meet on the 7th? Set this
21 decision for November 7th. Further discussion. All
22 those in favor say aye.

23 COMMISSIONER LEACH: Aye.

24 CHAIRMAN EBERT: Aye. Opposed? Motion carries.
25 That concludes our business here today.

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(Hearing concluded.)

- - - - -

1 CLEARWATER COUNTY COMMISSIONERS' MEETING
2 VARIANCE ZV2011-2
3
4 OCTOBER 24, 2011
5 NOVEMBER 7, 2011
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25 TRANSCRIBED BY: KEITH M. EVANS, RPR, CSR NO. 655

K & K REPORTING (208) 746-7250
kkreport@wildblue.net

1 BE IT REMEMBERED that the above-entitled matter
2 came on for hearing before the Clearwater County Commissioners
3 November 7th, 2011, in the Commissioners' Room of the Clearwater
4 County Courthouse, City of Orofino, County of Clearwater,
5 State of Idaho.

6 (Thereupon the following oral proceedings
7 were had as follows, to-wit:)

8 CHAIRMAN EBERT: It's five minutes after 10:00.
9 We're here on the 7th day of November, 2011. We're
10 convening to enter our decision in the Galloway appeal.
11 And we had a chance to review pretty much reviewed the
12 whole thing. What do you think?

13 COMMISSIONER LEACH: You know, I went back
14 through it, too. I was just going back over a couple
15 of things to refresh it in my mind. I read it a week
16 ago. You know, my understanding is that we are not to
17 substitute our judgment for Planning and Zoning. Ours
18 is like determine the facts. Did they have the facts
19 in evidence to make the decision that they did. And
20 frankly, you know, after reading it and then going over
21 it again I believe that they do have the facts in
22 evidence to make that determination.

23 CHAIRMAN EBERT: Again, you know, one of my goals
24 in this is to get the thing right or -- and I spent
25 quite a bit of time with Clayne (inaudible) determine

1 whether the zoning board's findings are supported by
2 the substantial evidence, and if so whether the board's
3 conclusion properly applied the zoning ordinance as to
4 the facts found. And so -- and I talked to him quite a
5 bit about what that means, substituting our judgment
6 for theirs, and it's like if a reasonable person would
7 conclude that they had enough to base their decision
8 then that's what we're looking for. We're not looking
9 for whether we think that decision was, you know, their
10 judgment. We're not to replace their judgment with
11 ours. So I went through this. There's some things
12 that are kind of important. And another thing, too, is
13 Mr. Jones brought up a case Dawson vs. Blaine County,
14 and so Clayne reviewed that case and then discussed it
15 with me and that case (inaudible). Fact that the
16 county and the Planning and Zoning Commission
17 (inaudible) that's what hardship the (inaudible). The
18 most pertinent thing I could find to rely on is in Waha
19 vs. Ada County. Said the board then determined that
20 strict enforcement of Ada County Highway District
21 Policies would require extensive realignment and
22 reconstruction of the public road, which was
23 unreasonable and would create an undue hardship on the
24 applicants not justified by development generating only
25 80 vehicle trips per day. And to me, again, discussing

1 it with Clayne ad nauseam to me what that says is that
2 if the cost of the (inaudible) not justified
3 (inaudible). Long ago we had, you know, Rob our road
4 department supervisor goes as kind of the neutral third
5 party looking at it just from the aspect of roads. And
6 he says that that -- what Ed is asking to do there
7 would be adequate. And so Ed wrote to Planning and
8 Zoning. This is from Ed Galloway. Due to the nature
9 of the existing easement that has been granted the
10 strict enforcement of a 60-foot wide easement with a 24
11 surface road dedicated public right-of-way establish in
12 the Clearwater subdivision (inaudible). To me that's
13 pretty much saying the same thing. And then
14 (inaudible) there was several things, but one I would
15 like to point out. Mr. Woosley, in fact, said, well, I
16 think the ordinance -- therefore, (inaudible) would be
17 an adequate (inaudible.) So we're asking him to comply
18 with (inaudible) proposing. In my mind that pretty
19 well covers it. I think they have (inaudible) base
20 their decision. I think they followed the process. In
21 fact Bobbi did an excellent job keeping things in
22 track. I realize that (inaudible) welcome that, but I
23 would be curious just for our own feedback if we had
24 done things properly, you know. I would be curious to
25 see what the court says about (inaudible), and I hope

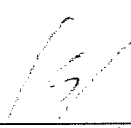
1 that if it does go to court I hope (inaudible). With
2 that (inaudible). Been moved and seconded (inaudible)
3 roll call vote. Don, aye (inaudible).
4 (Hearing concluded.)
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CERTIFICATE OF TRANSCRIPTION

The undersigned does hereby certify that he
correctly and accurately transcribed and typed the foregoing
transcript from the TAPE RECORDING of the hearing which
was RECORDED in the above-entitled action or proceeding.

Dated this 11th day of January, 2012.



Keith M. Evans, RPR, CSR NO. 655
Court Reporter

MIDDLE ROAD

Response for the request of public records	23
Road & Bridge file of Middle Rd copied 04/06/11	24



CLEARWATER COUNTY BUILDING & PLANNING
150 Michigan Ave. • PO Box 586 • Orofino, ID 83544
(208) 476-4815 • Fax (208) 476-8994 • bp@clearwatercounty.org

April 8, 2011

Garry Jones
JONES, BROWER & CALLERY, P.L.L.C
PO Box 854
Lewiston, ID 83501

Dear Mr. Jones,

Enclosed is the response to your request to examine and a copy of the public records which relate to the establishment of Middle Road in Clearwater County, east of Brown Road. This is the entire file that the County Road and Bridge Department has on Middle Road.

A statement for copies has been included. You can send a payment for these records or we can deduct it out of the initial \$500.00 you sent for the transcriptions and keep a tab on what all the expenses are. Either way will suffice until we get through the appeal.

If you have any concerns or need any additional information, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Bobbi Kaufman".

Bobbi Kaufman, Administrator
Clearwater County Building and Planning Department

Enclosures

MIDDLE ROAD INFORMATION

Copied from Road & Bridge file
April 6, 2011

OFFICE OF
THE BOARD OF COUNTY COMMISSIONERS
NEZ PERCE COUNTY, IDAHO

Mr. Herman F. Weinman

Overseer of Road District No. 56

By order of the Board of County Commissioners of said County, you are hereby notified that on the 26th day of October 1910 at a regular meeting of said Board, an order was made declaring the R. M. Crow et al., Road to be a public highway, and directing you as such Overseer to open up said road to public travel. The general description of said road is as follows:

Beginning at the quarter section corner between section 10 and 15 Tp 37 NR 1 EBM, and ending at the quarter section corner between sections 17 and 18 .

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 2nd day of December

A. D. 19 10

422

W. L. Gifford, Clerk.

4. p. 399. Proceedings of Board of Co. Commissioners
Oct term 1910.

In the matter of the viewers report
on the R.M. Crow et al road in road
district No 56 it appearing that the
viewers duly qualified according to
law; that they filed with this Board
their report And same is approved And
it further appearing that the land
owners along said road have given
their consent in writing to the
opening of said road and granted
the right of way; Now therefore the
said road is hereby declared a public
highway And the overseer of said
district is ordered to open the
same to public travel And the
County Surveyor is directed to plat
and record said road, which
road is described as follows:

attest: M. L. Highland Clerk
J. B. C.
By M. L. Highland

§ p. 362 Proceedings of Board of Co. Commissioners
July Term 1910.

In the matter of the petition of
R. M. Crow et al for the laying out
of a public road in road District
No. 56, it appearing to the satisfaction
of the Board that the petition is
regular ^{And} conforms to the laws
applicable thereto ^{And} that same is
accompanied by a good ^{And} sufficient
bond, which bond is hereby approved
it is ordered that E. D. Briggs County
Surveyor, Herman Weinmann ^{and}
John Hight be ^{And} they are hereby
appointed Viewers to view ^{out} ^{and}
survey said road, and to meet
said E. D. Briggs County Surveyor
at the point of beginning at such
time as he may designate ^{And}
make due report to this Board.

Attest: W. L. Lifford ^{clerk} J. B. Davis
By W. E. Daggett, ^{Spy.} Chairman

Office of
Board of Commissioner.

In and for the County of Nez Perce, State of Idaho.

R. M. Crow, Et. al.
Road

State of Idaho.

County of Nez Perce.

}
} 93
}

I, J. H. Lyon, Clerk of the Board in and for Nez Perce County, Idaho, do hereby certify the following and hereto attached to be a full, true and correct list of, and comprises all the papers filed in the above entitled office in the above entitled road except the order transferring the said files to Clearwater County, Idaho. to-wit:-

Viewers Report.
Order
Proceeding.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, this 16 day of Aug 1911.

J. H. Lyon, Clerk Board.
Thos Lindgren

37-18

10280

10-33

No.

Road

IN

CLEARWATER COUNTY

PROBATE

Court

R. M. Crow

Plaintiff .

VS.

Defendant .

Action for

Docket

Page

Attorney for Plaintiff

Attorney for Defendant

R. M. CRE, Petition

Middle Road FROM
INTERSECTION OF BROWN/
SUMMERS - N E TOWARDS
N.F. RIVER

ROAD PETITION

To The Honorable Board of County Commissioners, Clearwater County, Idaho:

We, the undersigned residents and inhabitants of Road District No. 10; Clearwater county, Idaho, taxable therein for road purposes, pray that your honorable body cause to be surveyed & plated in said road district, a public road fifty feet in width, having its point of beginning and termination, course and intermediate points, as follows, to-wit:

Begining at the intersection of the $\frac{1}{2}$ sec, line with the W, sec, line of
Sec, 17, T, 37, R, 1 E, B.M, Thence E, along said $\frac{1}{2}$ sec, line 1 mile
Thence North Easterly to the S,W.corner of Sec, 10,
Thence E. along the S, Sec, line of Sec, 10, 1 Mile

The object of this proposed road is as follows, To have the lines
run ough so they can build there fencis, Knowing there will be a
road wanted sooner or later, There is several families living along
said proposed road,that would do some work on it if they had it
surveyed , so that there work would be where they knew it would perm
anent,

We, the undersigned land owners across whose premises the proposed road passes, hereby consent to the same and waive all damages:

Names

Names

Geo H. Wine
J. M. Myers
R. B. Luty
J. W. Caughlan
R. M. Brown

We, the undersigned land owners across whose premises the proposed road will pass, hereby object to the same and demand damages in the amount indicated opposite our names:

Names

Names

The above described road will pass over the following described lands owned by the following named persons:

The	Owned by	Garison
The	Owned by	J. M. Myers
The	Owned by	R. M. Brown
The	Owned by	R. B. Luty
The	Owned by	J. W. Caughlan
The	Owned by	Geo H. Wine
The	Owned by	
The	Owned by	
The	Owned by	
The	Owned by	

All the owners above named consent to the _____ of said road except:

The probable cost of securing the right of way will be \$ _____

The necessity for and advantage of the _____ of said roads are as follows:

PLAT OF ROAD SOUGHT TO BE-----

Tp.----- North, Range----- W. B. M.	6	5	4	3	2	1	6	5	4	3	2	1	Tp.----- North, Range----- W. B. M.
	7	8	9	10	11	12	7	8	9	10	11	12	
	18	17	16	15	14	13	18	17	16	15	14	13	
	19	20	21	22	23	24	19	20	21	22	23	24	
	30	29	28	27	26	25	30	29	28	27	26	25	
	31	32	33	34	35	36	31	32	33	34	35	36	
Tp.----- North, Range----- W. B. M.	6	5	4	3	2	1	6	5	4	3	2	1	Tp.----- North, Range----- W. B. M.
	7	8	9	10	11	12	7	8	9	10	11	12	
	18	17	16	15	14	13	18	17	16	15	14	13	
	19	20	21	22	23	24	19	20	21	22	23	24	
	30	29	28	27	26	25	30	29	28	27	26	25	
	31	32	33	34	35	36	31	32	33	34	35	36	

PETITIONERS	PETITIONERS
<i>Joseph ...</i> <i>...</i> <i>...</i> <i>...</i> <i>Wm Harbach</i> <i>P. E. ...</i> <i>W. F. E. Harbach</i>	<i>...</i> <i>B. C. Leuty</i> <i>J. W. Caughan</i> <i>R. M. ...</i> <i>Carl Thompson</i>

7/10/16

ROAD PETITION

of Joseph Myers

et al.,
For Opening of a

public road in Road Dist. No. 10

Filed JUL 10 1916 191

W. H. Hoffmann
Clerk.

By M. Shreve
Deputy.

Viewed by

REMARKS

Petition examined and July
14th per for book of recording back
road road
dated this 14th July 1916
John A. Hallan
Clerk

In the matter of _____ petition of _____

ROAD VIEWERS' REPORT.

and others for _____ of a Public Road.

TO THE HON. BOARD OF COUNTY COMMISSIONERS _____ COUNTY:

The undersigned, having been appointed by you to view the proposed route of Road after having been sworn according to law did proceed to lay out said Road as follows, beginning at

*The 1/4 sec cor bet
Secs. 10 and 15 T 37 N R. 1 E. B.M. thence West on sec line bet
Secs. 10 and 15 to the cor. of Secs. 9 10 15 and 16 thence from sec cor
S. 68° W. 650 chs. S. 45° W 400 chs. S 58° W 500 dis. S 39° W. 400 chs.
S. 30° E 400 .. S 38° W. 650 .. S 50° W 400 .. N 87° W. 500 ..
S. 85° W 350 .. N 64° W 600 .. S 86° W 200 .. S 65° W 500 ..
S 86° W 250 .. S. 71° W 300 .. S 42° W 450 .. S 62° W 300 ..
S 63° W 200 .. S 22° W 300 .. S 40° W 300 .. S 68° W 200 ..
S 65° W 250 .. N 85° W 150 .. N 68° W 500 .. S 85° W 250 ..
S 52° W 500 .. S 55° W 600 .. S 70° W. 375. D. Fir to the
1/4 cor bet Secs 16 & 17 thence West one mile*

2 3/4 miles and 6.75 chs.

Ending at

the 1/4 cor bet Secs 17 & 18

We estimate the damage to the following named land owners through whose land said Road will run as follows:

NAMES OF OWNERS	DAMAGED	NAMES OF OWNERS	DAMAGED
<i>Right-of-way has all been signed on the Road by Patton</i>			

And your Viewers would further report that the following named persons have consented in writing to give the right of way for said Road, over lands owned by them, as herein specified, which relinquishments have been filed herewith on

OWNERS' NAMES	Length in Rods	Width in Feet	PART OF SUBDIVISION	Sec.	Twp.	Rng.
<i>All Consent</i>						

And your Viewers would report that the following named persons, through whose land said road runs do not consent to give the right of way, and claim damages as below set out.

NAMES	Length in Rods	Width in Feet	PART OF SUBDIVISION	Sec.	Twp.	Rng.	Damages Claimed
<i>No damages.</i>		<i>all signed</i>					

Sept 17-10

Sept 17-10

Mr. Briggs

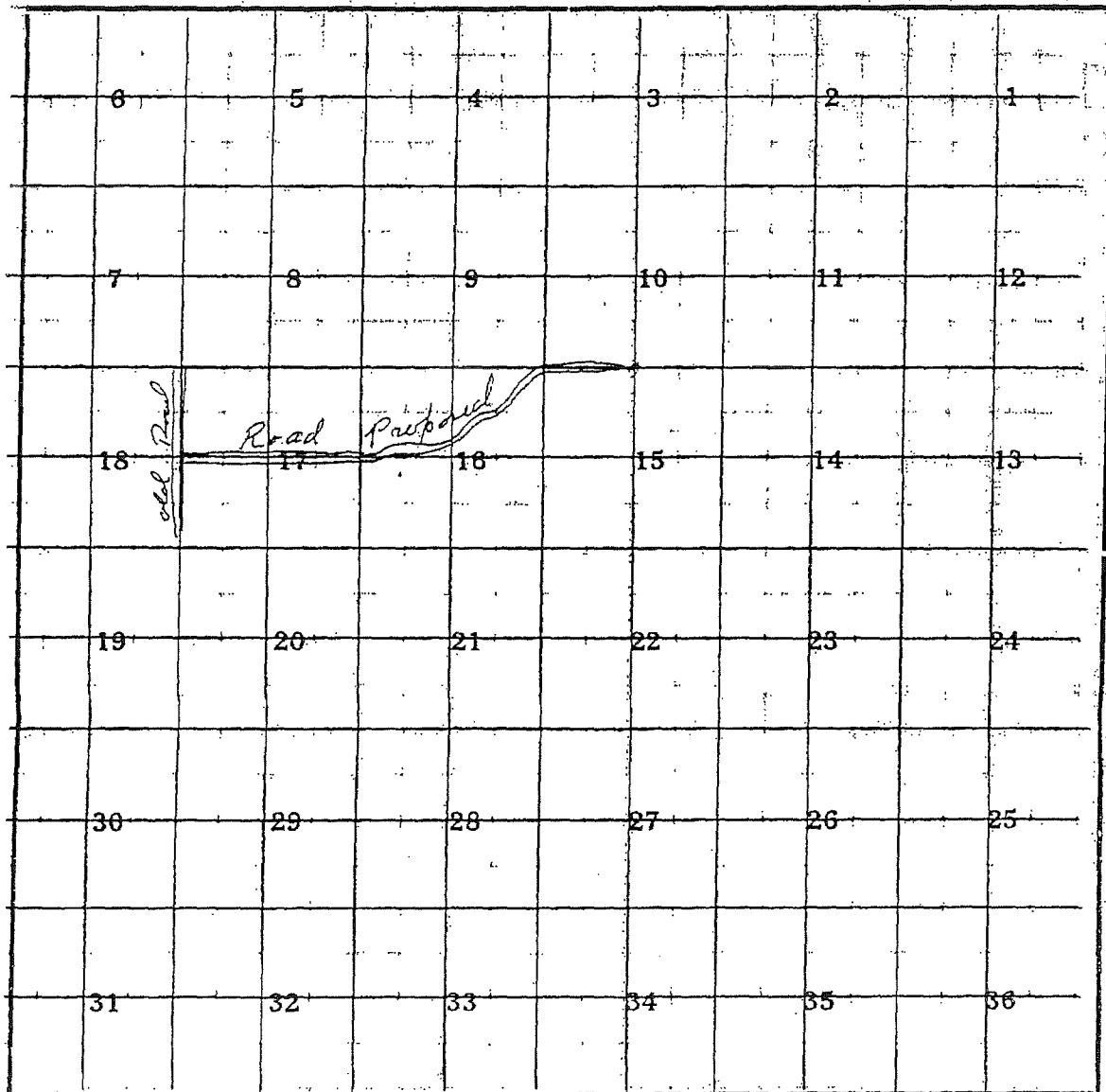
Dear Sir,

allow me to state that
I found the North and
South Line 270 yards east
of Stake and 70 yards
South of the Road is what
Mr. Horne claims the $\frac{1}{2}$ S.
Cor.

Respectfully

J. E. De Lave

T. R.



OATH OF OFFICE

STATE OF IDAHO

County of Nez Perce.

ss

Herman Wenman, having been duly Sworn to
the office of Deputy in and for Leetung Co. Road in
said County and State, do solemnly swear (or affirm) that I will support the Constitution of the United States,
and the Constitution and Laws of this State: that I will faithfully discharge all the duties of the office of
Deputy according to the best of my ability, so help me God

Herman Wenman

Subscribed and sworn to before me this 12th day

of August 1900
Edson D. Briggs Co.
Sheriff of Nez Perce

ROAD PETITION

To the Honorable Board of County Commissioners, Nez Perce County, State of Idaho:

We, the undersigned residents and inhabitants of Road District No. 56.
Nez Perce County, Idaho, taxable therein for road purposes, pray that your honorable body
cause to be laid out in said road district a public road fifty feet in width,
having its point of beginning and termination, course and intermediate points, as follows,
to-wit:

Commencing at the quarter stake, on
the line between Sec. 10 & 15. Thence
to the common corner of Sec. 9-10-15 & 16.
Thence Meandering from said corner to a
stake on line between 16 & 17. Thence
one mile to intersect the Crow so
a distance of three miles. All in Twp
37-1-E. B. M.

We, the undersigned land owners across whose premises the proposed road passes, hereby consent to the same and waive all damages:

Names

Names

R. M. Crow For the heirs
of Jesse W. Crow
Amos P. Blaine
Wm. F. Blaine
Wm. Hefke

We, the undersigned land owners across whose premises the proposed road will pass, hereby object to the same and demand damages in the amounts indicated opposite our names:

Names

Names

The above described road will pass over the following described lands owned by the following named persons:

The _____	Owned by _____
The $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 17 T 37 R 1 E B M	Owned by heirs of Jesse
The _____	Owned by _____
The $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 17 T 37 R 1 E B M	Owned by Amos P. Blaine
The $\frac{1}{4}$ E $\frac{1}{4}$ S W $\frac{1}{4}$ Sec 15 T 37 R 1 E B M	Owned by Wm. F. Blaine
The $\frac{1}{4}$ W $\frac{1}{4}$ Sec 15 T 37 R 1 E B M	Owned by Wm. Hefke
The _____	Owned by _____
The _____	Owned by _____
The _____	Owned by _____
The _____	Owned by _____

All the owners above named consent to the _____ of said road

PLAT OF ROAD SOUGHT TO BE

Tp. 37 North, Range 1 E. B. M.	W. B. M.	6	5	4	3	2	1	Tp. North, Range W. B. M.
		7	8	9	10	11	12	
		18	17	16	15	14	13	
		19	20	21	22	23	24	
		30	29	28	27	26	25	
		31	32	33	34	35	36	
Tp. 37 North, Range 1 E. B. M.	W. B. M.	6	5	4	3	2	1	Tp. North, Range W. B. M.
		7	8	9	10	11	12	
		18	17	16	15	14	13	
		19	20	21	22	23	24	
		30	29	28	27	26	25	
		31	32	33	34	35	36	

PETITIONERS

PETITIONERS

R. M. Crow
to the E. Harne
Rachel C. Weismann
W. Thompson
Louis M. White
C. E. Stalmark
Amos H. Crow
L. B. T. T. T.
L. B. T. T. T.

BOND

Know all Men by these Presents, That Carl Thompson and J. E. De Lane are held and firmly bound unto the County of Nez Perce, in the State of Idaho, in the sum of \$500 Dollars, to be paid unto the said County of Nez Perce, for which payment well and truly to be made, we jointly and severally bind ourselves and each of our heirs, executors and administrators firmly by these presents.

Signed and dated this 23 day of June, 1901

The condition of this obligation is such that whereas the above named Bondsman Carl Thompson & J. E. De Lane, et al., road petitioners have applied to the Board of County Commissioners for the Locating of a public road as fully set forth in the accompanying petition and made a part hereof. Now, if the said bondsmen will pay all the costs of viewing and surveying said road in case the prayer of said petitioners is not granted and the road finally not opened, then this obligation to be void, otherwise to remain in full force and effect.

In testimony whereof we have hereunto set our hands this 23 day of June, 1901

Witnesses:

E. A. McGuire

S. S. Smith

J. E. De Lane
C. Thompson

State of Idaho,

County of Nez Perce

ss.

being duly sworn, says each for himself, that he is one of the sureties named; that he is a resident and freeholder of the county of Nez Perce, State of Idaho, and worth the amount of _____ Dollars specified in the foregoing bond, above his debts and liabilities, and exclusive of his property exempt from execution.

Subscribed and sworn to before me this 23 day of June, A. D. 1901

S. S. Smith

I hereby approve the above bond and the sureties thereon this _____ d of _____, A. D. 1901

Chairman of Board

ROAD PETITION

To the Honorable Board of County Commissioners, Clearwater County, State of Idaho:

We, the undersigned residents and inhabitants of Road District No. 16 Clearwater County, Idaho, taxable therein for road purposes, pray that your honorable body cause to be Constructed in said road district a public road fifty feet in width, having its point of beginning and termination, course and intermediate points, as follows, to-wit:

Beginning at the termination of the
Crow road, at the half mile corner
between Section 10 and 16, running
thence in a south-easterly
direction a cross the N. $\frac{1}{2}$ of N.E. $\frac{1}{4}$
of S 16; thence a cross the N. $\frac{1}{2}$ of N.W. $\frac{1}{4}$
and the N. $\frac{1}{2}$ of N.E. $\frac{1}{4}$ S 14 thence a
cross the line between S 13 and S 14
about 10 rods at or near the line
between the N.W. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ and
the S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$, thence in a South-
Westerly direction a cross the S.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$
of S. 14 to point of intersection with
the North-fork road

J.E. DELANE (John Delane)
5-10234

We, the undersigned land owners across whose premises the proposed road passes, hereby consent to the same and waive all damages:

NAMES	NAMES
J. E. De Lane	
C. W. Townsend	
L. E. Stelmack	
M. G. Grosvenor	
Frank Williams	

We, the undersigned land owners across whose premises the proposed road will pass, hereby object to the same and demand damages in the amounts indicated opposite our names:

NAMES	NAMES

The above described road will pass over the following described lands owned by the following named persons:

The $N \frac{1}{2}$ of $N \& E \& S 15$	Owned by J. E. De Lane
The $S \frac{1}{2}$ of $N \& E \& S 13$	Owned by C. W. Townsend
The $N \& E \frac{1}{2}$ of $N \& E \& S 19$	Owned by L. E. Stelmack
The $N \& E \frac{1}{2}$ of $N \& E \& S 15$	Owned by M. G. Grosvenor
The $N \frac{1}{2}$ of $N \& E \& S 14$	Owned by Frank Williams
The	Owned by
The	Owned by
The	Owned by
The	Owned by
The	Owned by
The	Owned by

All the owners above named consent to the _____ of said road except:

The probable cost of securing the right of way will be \$_____

The necessity for and advantage of the _____ of said road are as follows:

PLAT OF ROAD SOUGHT TO BE

North, Range 16 B. M.

North, Range 16 B. M.

North, Range 16 B. M.

North, Range 16 B. M.

6	5	4	3	2	1	6	5	4	3	2	1
7	8	9	10	11	12	7	8	9	10	11	12
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19	20	21	22	23	24	19	20	21	22	23	24
30	29	28	27	26	25	30	29	28	27	26	25
31	32	33	34	35	36	31	32	33	34	35	36
6	5	4	3	2	1	6	5	4	3	2	1
7	8	9	10	11	12	7	8	9	10	11	12
18	17	16	15	14	13	18	17	16	15	14	13
19	20	21	22	23	24	19	20	21	22	23	24
30	29	28	27	26	25	30	29	28	27	26	25
31	32	33	34	35	36	31	32	33	34	35	36

North, Range 16 B. M.

North, Range 16 B. M.

North, Range 16 B. M.

North, Range 16 B. M.

PETITIONERS

J. E. Lee
 W. M. Jones
 C. H. Jones
 Jessie A. Townsend
 L. E. Stalder
 Myrtle
 M. J. Jones
 Miss M. A. Jones
 M. C. Jones
 Estelle Jones

PETITIONERS

BOND

KNOW ALL MEN BY THESE PRESENTS, That J. J. Michel and
C. J. Buchel are held and firmly bound unto the County of
Clearwater, in the State of Idaho, in the sum of Twenty and no Dollars,
to be paid unto the said County of Clearwater, for which payment well and truly to be made, we jointly and
severally bind ourselves and each of our heirs, executors and administrators firmly by these presents.

Signed and dated this 10th day of May, 1913.

The condition of this obligation is such that whereas the above named J. J. Michel and
C. J. Buchel, et al., road petitioners have applied to the Board of
County Commissioners for the Construction of a public road as fully set forth in the accom-
panying petition and made a part hereof. Now, if the said bondsmen will pay all the costs of viewing and
surveying said road in case the prayer of said petitioners is not granted and the road finally not opened, then
this obligation to be void, otherwise to remain in full force and effect.

In testimony whereof we have hereunto set our hands this 10th day of May, 1913.

Witnesses:

J. R. Sims
S. S. Linton

J. J. Michel
C. J. Buchel

STATE OF IDAHO

County of Clearwater. } ss.

being duly sworn, says each for himself, that he is one of the sureties named; that he is a resident and free-
holder of the county of Clearwater, State of Idaho, and worth the amount of Twenty and no
Dollars specified in the foregoing bond, above his
debts and liabilities, and exclusive of his property exempt from execution.

Subscribed and sworn to before me this 10th day of May, A.D. 1913.

I hereby approve the above bond and sureties thereon this 10 day of May,
A.D. 1913.

Frank C. Linder
Chairman of Board.

In the Matter of the Petition of

J. E. McTear

ROAD VIEWERS' REPORT

and others for *Construction* a Public Road.

TO THE HON. BOARD OF COUNTY COMMISSIONERS CLEARWATER COUNTY:

The undersigned, having been appointed by you to view the proposed route of Road after having been sworn according to law did proceed to lay out said Road as follows, beginning at ~~from a point~~

from a point 415 ft East of corner of sect 9, 10, 15, 16 Twp 37 N R 1 E B. M. thence as follows S 19° 30' E 304 ft; S 30° W, 109; S 48° 5' E 127; S 65° 25' E 275; S 84° 18' E 405; S 87° 48' E 86; S 86° 44' E 296; S 46° 34' E 99; N 88° 50' E 115; S 56° 40' E 125; S 41° 30' E 127; S 60° 10' E 170; S 80° E 84; N 42° E 89; S 74° 20' E 62; N 89° 40' E 70; N 83° E 71; N 76° E 135; N 80° 55' E 112; N 88° E 80; N 49° 45' E 102; N 40° 30' E 770; N 40° 30' E 60; N 18° 30' E 524; N 86° 30' E 536; S 50° 10' E 152; S 60° 45' E 31; N 79° E 111; N 67° 20' E 46; N 67° 50' E 850; S 42° 5' E 67; S 65° 20' E 113; S 80° E 139; S 86° 35' E 86; N 76° 35' E 54; N 44° 50' E 49; N 50° 20' E 226; S 83° 10' E 167; N 59° 15' E 55; N 8° 40' W 50; N 44° 20' W 59; N 33° 30' W 71; N 10° 50' W 275; N 24° 45' E 63; N 78° 20' E 84; N 19° 30' W 51; N 28° 30' W 46; N 30° E 474; N 85° 15' E 362; S 58° 45' E 79; S 80° 30' E 94; N 84° 45' E 81; N 49° 5' E 83; N 26° E 61; N 60° 45' E 179; N 63° E 90; N 40° E 55; N 18° 30' E 125; N 53° 35' E 63; N 44° 30' E 59; N 50° 30' E 51; N 45° 20' E 340; S 78° 10' E 74; N 78° 50' E 49; N 83° 30' E 57; N 72° 15' E 40; N 54° 35' E 115; N 52° 30' E 107; N 66° E 335; S 64° 5' E 83; N 82° E 92; N 87° 15' E 90; N 71° 20' E 67; N 43° 30' E 65; N 22° 30' E 67; N 24° W 25; N 10° E 250; N 37° 25' E 130; N 68° 54' E 45; N 38° E 410; N 13° 40' E 560; S 68° 30' E 131; N 77° 50' E 115; N 60° E 170; N 71° 40' E 704; S 53° E 540; S 45° 25' E 159; S 19° 30' W 1880; S 11° 20' W 810; S 4° 10' E 99

We estimate the damage to the following named land owners through whose land said Road will run as follows: S 23° 20' W 76; S 30° 20' W 104; S 26° W 69; S 30° 50' W 94; S 65° W 430

Names of Owners	Damaged	Names of Owners	Damaged
S 19° W 71; S 31° W 280; S 34° 10' W 76; S 38° 10' W 220; S 33° 10' W 267			
S 28° W 330			

The Bearings given are Magnetic Bearings.

All have signed the Petition

And your Viewers would further report that the following named persons have consented in writing to give the right of way for said Road, over lands owned by them, as herein specified which relinquishments have been filed herewith on

[illegible]

And your Viewers would report that the following named persons, through whose land said road runs, do not consent to give the right of way, and claim damages as below set out.

[illegible]

T

R

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

of a Road Beginning at

John A. ...

Filed this _____ day of _____

Lucy
A.D. 1913

Charles T. Thompson
Clerk.

By J. M. Moore
Deputy.

MIDDLE ROAD

5/4 Promise and Agreement

of

Mary Katherine Herring

Regarding

Right of Way

Nov. 15, 1916

To the Board of Humboldt Co. Commissioners
Clearwater Co. State of Idaho.

his be these presents promise and agree
the following conditions and circumstances in
regard to right of way across my place to
K. Herring.

First, start from center of section 13 Townsh.
37 N 10 E along line of section 13 and 14
providing with 12 rods out from
corner north then east 6 ft then south
road past orchard thence east end of town
1/2 of the road to corner 1/2 mile from corner
on reservation line that is to make bridge
across road for 1/2 mile or about 1/2 mile section
being short a little.

Now same for fence \$50.00 fifty dollars.

Wm. K. Herring

8 3 4
8 3 4
8 3 4
0 9
1 2 3 4 5 6

8 3 4
8 3 4
8 3 4
0 9
1 2 3 4 5 6

8 3 4
8 3 4
8 3 4
0 9
1 2 3 4 5 6

6 7

8 3 4
8 3 4
8 3 4
0 9
1 2 3 4 5 6

8 3 4
8 3 4
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1 2 3 4 5 6

8 3 4
8 3 4
8 3 4
0 9
1 2 3 4 5 6

8 3 4
8 3 4
8 3 4
0 9
1 2 3 4 5 6

May 3rd

1901

Received from Alexander County

the sum of \$100.00

as per receipt of May 3rd 1901, and on my hand dated May 15th

1901
J. S. Thompson
J. S. Thompson

RIGHT OF WAY GRANT.

I, _____, a land owner affected by
the laying out of the ~~Briant~~ ^{Grant} et al. road in road district No. B, do
hereby grant and convey to CLEARWATER COUNTY the right of way over
my premises, viz: _____

and request that this grant be attached to and made a part of the
original Viewer's Report.

Dated this 17 day of July, 1911.

J. D. Ruskon

Land Owner.

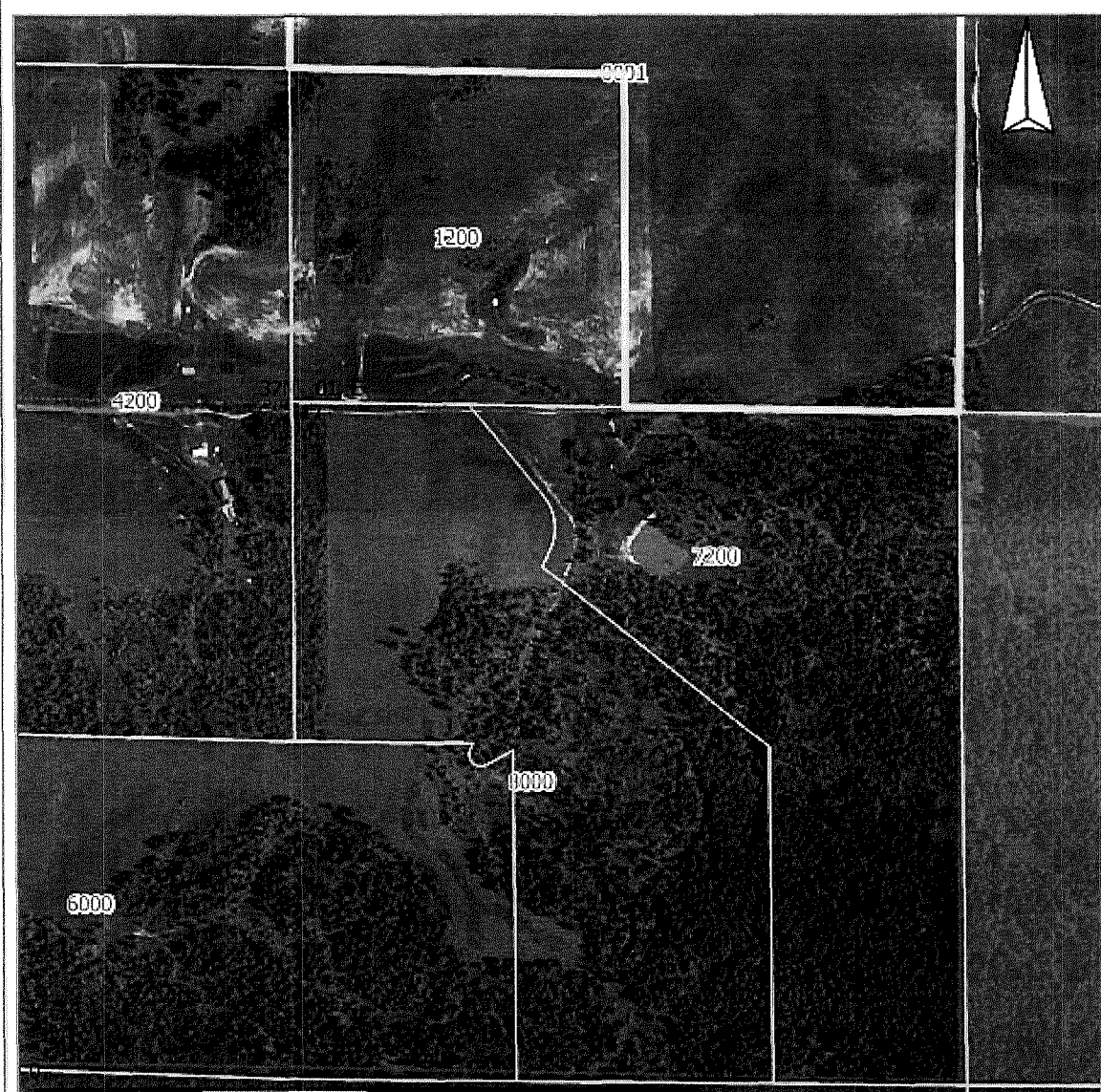
Witness:

RP37N01E170001A
SHINN REVOCABLE LIVING TRUST SHINN, EDWARD L & DONILEE E TRUSTEES

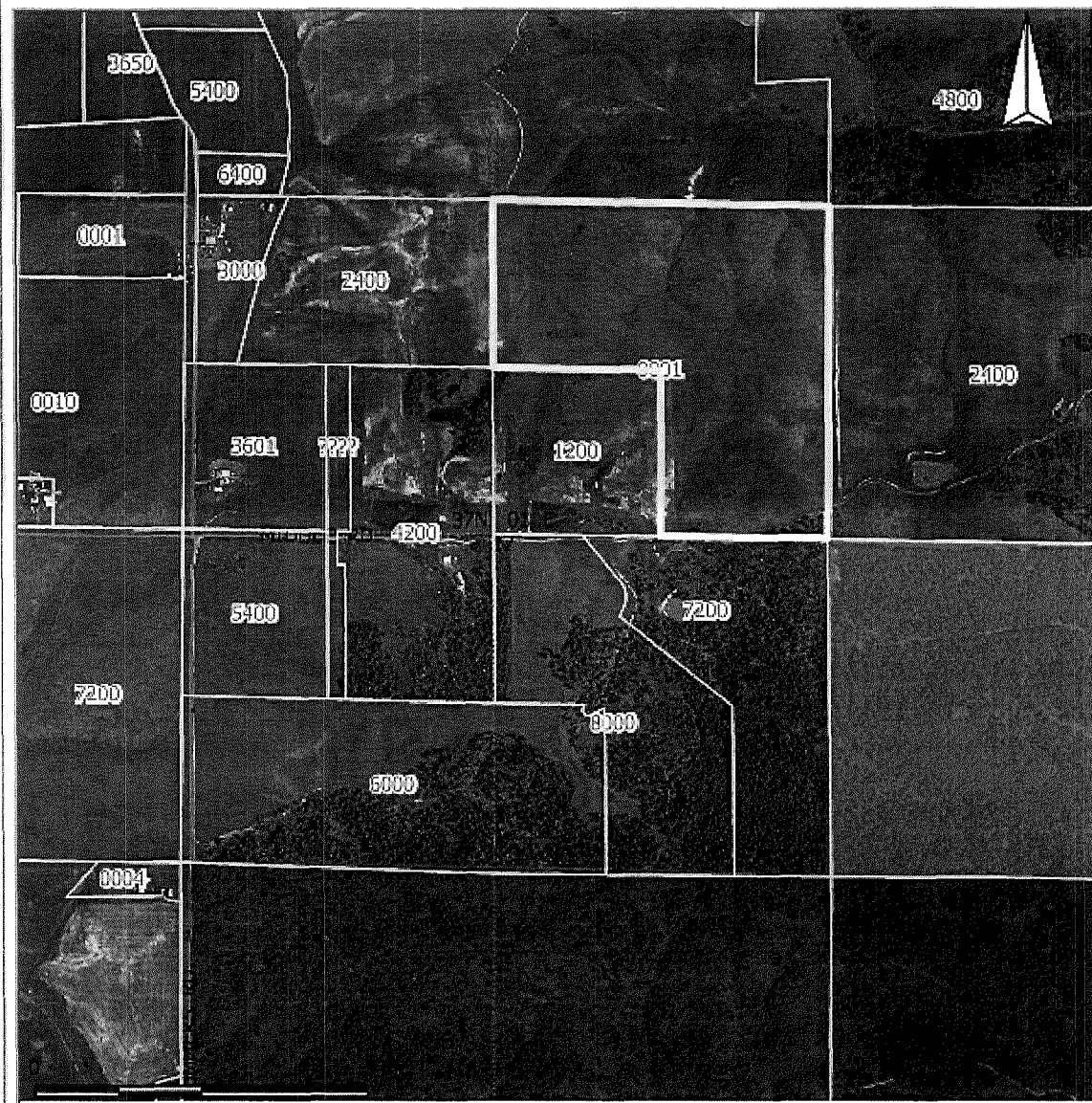
0 MIDDLE RD
LENORE
83541
N1/2 NE, SENE SEC 17 37N 1E

84
20080314
208230 CD
180966
177524

671 CHIEF SAMPSON RD
LOPPENISH, WA 98948-9690



RP37N01E170001A
SHINN REVOCABLE LIVING TRUST SHINN, EDWARD L & DONILEE E TRUSTEES
0 MIDDLE RD
LENORE
83541
N1/2 NE, SENE SEC 17 37N 1E
84
20080314
208230 CD
180966
177524
671 CHIEF SAMPSON RD
TORPENISH, WA 98948-9690



Google maps Address

To see all the details that are visible on the screen, use the "Print" link next to the map.

Get Directions My Maps

Print Send Link

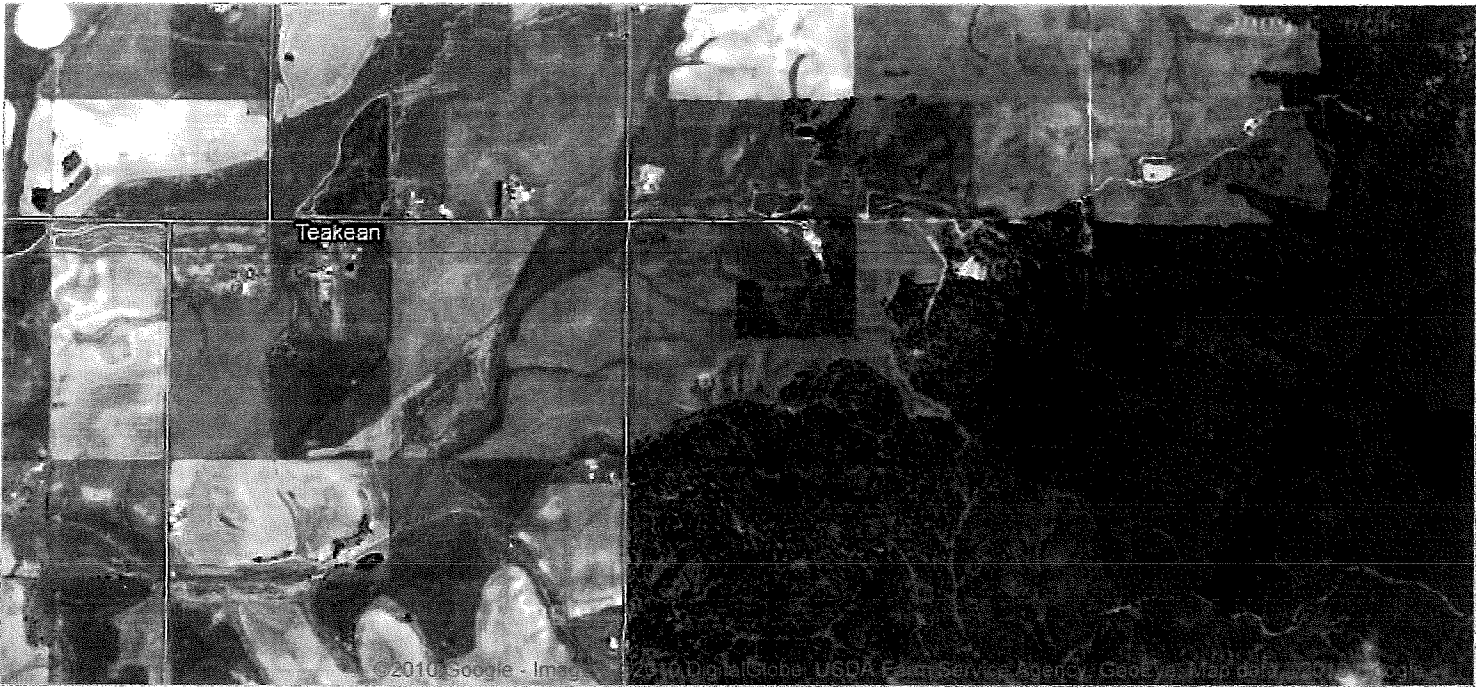


Google maps Address

To see all the details that are visible on the screen, use the "Print" link next to the map.

[Get Directions](#) [My Maps](#)

[Print](#) [Send](#) [Link](#)

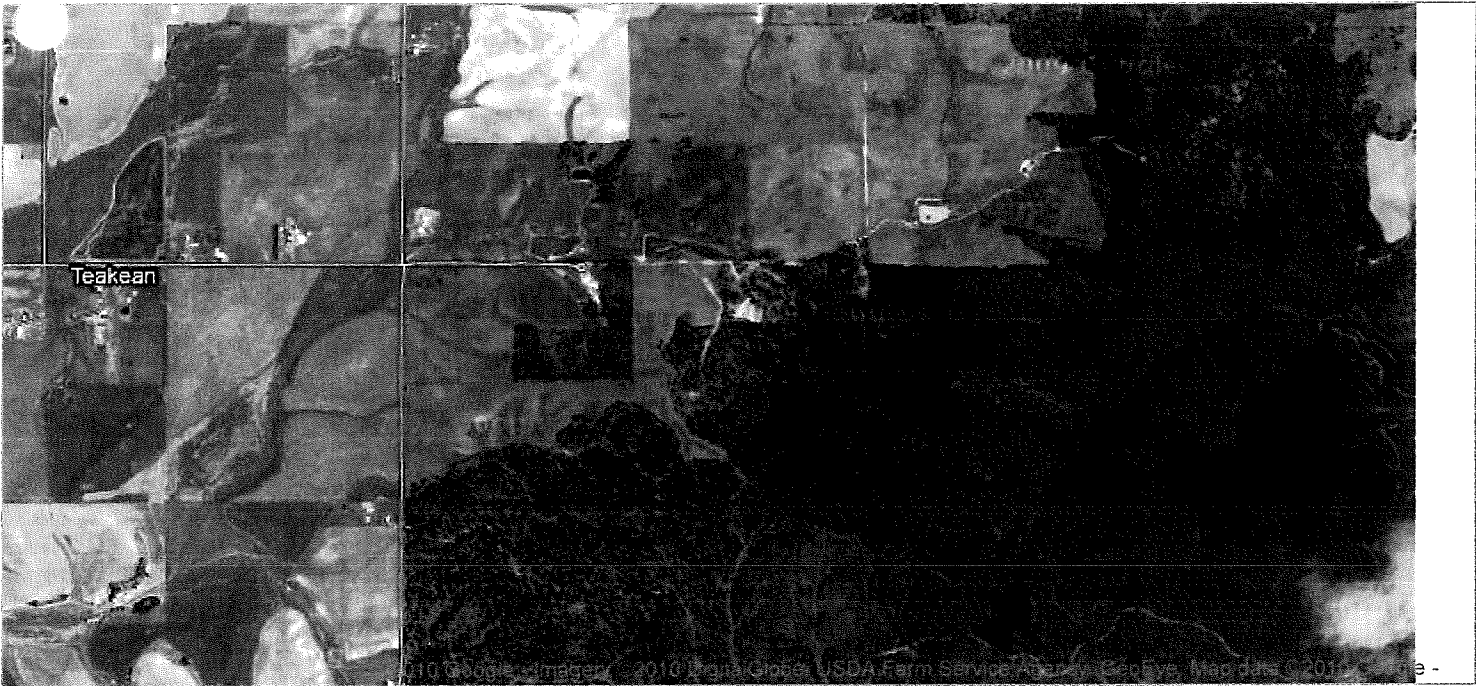


Google maps Address

To see all the details that are visible on the screen, use the "Print" link next to the map.

Get Directions My Maps

Print Send Link



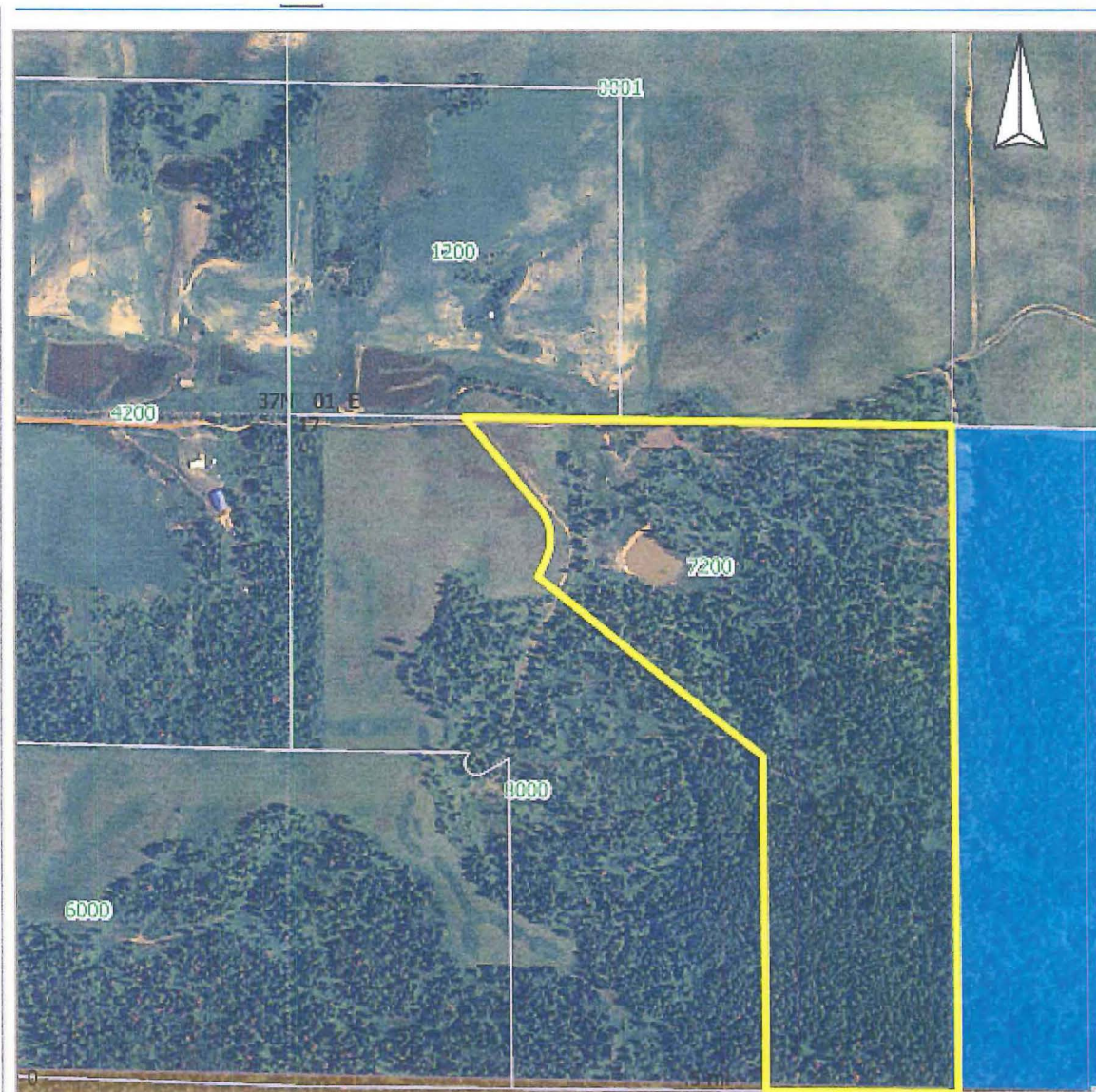
11/11/11
1/1/11
1/1/11
1/1/11

	RP37N01E177200A
	MARVIN, BARBARA J & HOMER

s:	0 BROWN RD
	LENORE
	83541
in:	SEC 17 37N 1E
	TAX #3040

	84
	20090107
	210559 PRD

:	6633 COUGAR RIDGE DR
	LEWISTON, ID 83501-7853





3 Bear ↗

Middle ↘











3 Bear

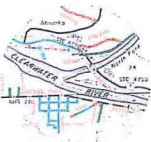


2000 Annual Reporting Map
 Constitutes the changes made as to
 the condition, construction, maintenance
 and repair of roads controlled and
 administered by CLEARWATER COUNTY
 as of the first day of October, 2000.

Signature
 Title
 Date



GREER AND VICINITY
 T. 35N, R. 2E, Sec. 24
 SCALE 1/4" = 1 MILE



AHSANKA AND VICINITY
 T. 36N, R. 1E
 SCALE 1/4" = 1 MILE

NEZ PERCE COUNTY
 T. 36N
 T. 37N
 T. 38N
 R. 1W
 R. 1E
 CLEARWATER
 T. 36N
 T. 37N
 T. 38N
 R. 1W
 R. 1E

Type of Road
 1. Primary
 2. Secondary
 3. Tertiary
 4. Local
 5. Private
 6. Road to Park
 7. Road to Park
 8. Road to Park
 9. Road to Park
 10. Road to Park

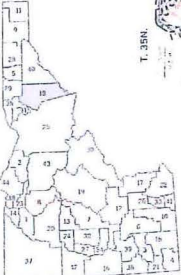
COLOR CODE
 1. Yellow
 2. Red
 3. Blue
 4. Green
 5. Purple
 6. Brown
 7. Black
 8. White
 9. Grey
 10. Pink

2000 ANNUAL REPORTING ROAD SURFACE MAP GENERAL HIGHWAY MAP CLEARWATER COUNTY IDAHO

INVENTORY DATA COLLECTED JULY 1997

SECTION	DATE	BY
SECTION 1	7/1/97	...
SECTION 2	7/1/97	...
SECTION 3	7/1/97	...
SECTION 4	7/1/97	...
SECTION 5	7/1/97	...
SECTION 6	7/1/97	...
SECTION 7	7/1/97	...
SECTION 8	7/1/97	...
SECTION 9	7/1/97	...
SECTION 10	7/1/97	...

IDAHO TRANSVERSE MERCATOR PROJECTION



SCALE
 1" = 1 MILE

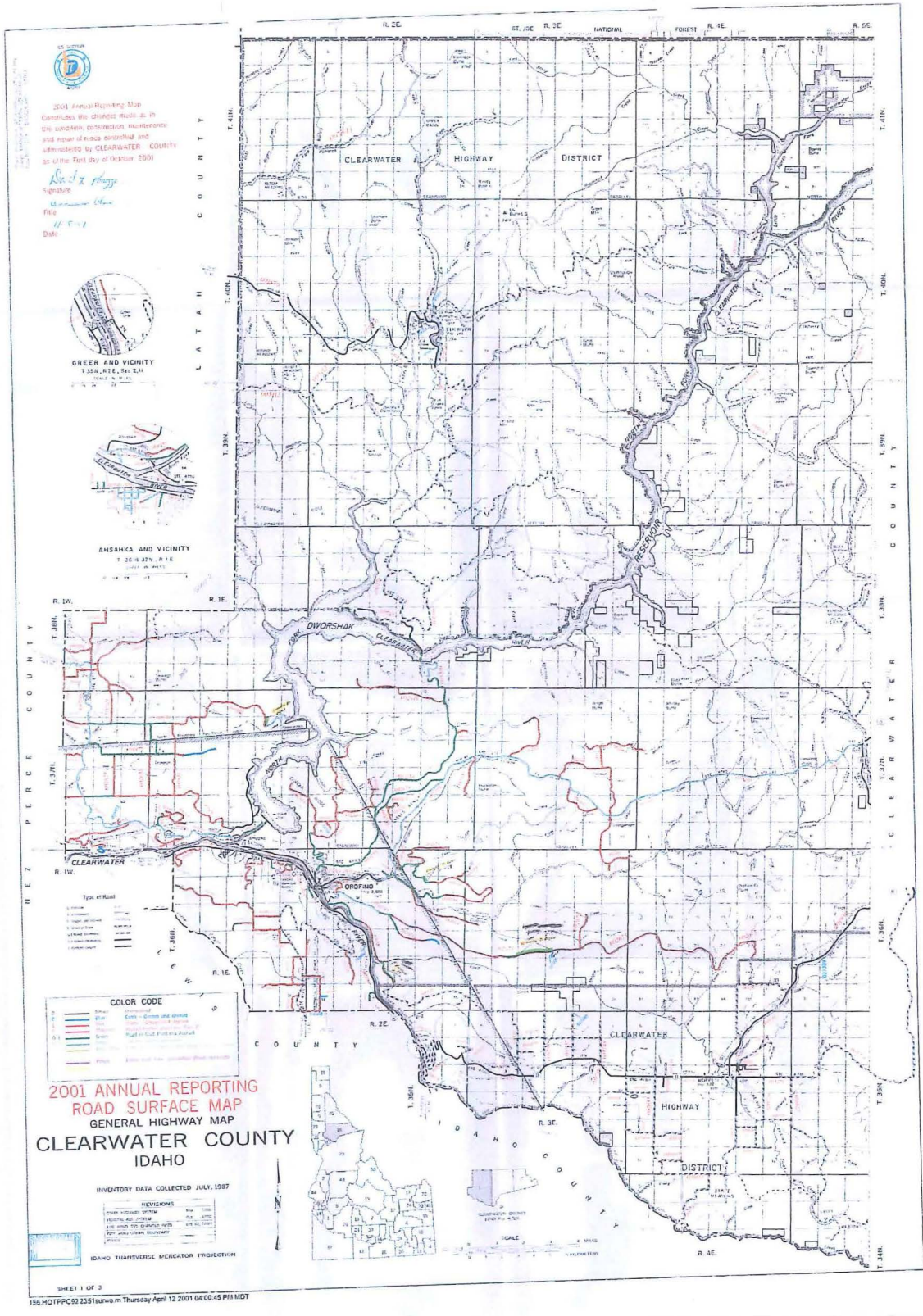
LATAH COUNTY
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CLEARWATER COUNTY
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CLEARWATER COUNTY
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CLEARWATER COUNTY
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 T. 99N
 T. 100N

CLEARWATER COUNTY
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 T. 97N
 T. 98N
 T. 99N
 T. 100N



LOCAL ROAD MILEAGE REPORT

CLEARWATER

2007

COUNTY

HIGHWAY DISTRICT

FOR YEAR ENDED

	1	2	3	4	5	6	7	8	9	10
Road Surface Type	Existing Mileage at beginning of the Year	Error revision	Mileage obliterated from your Jurisdiction (road no longer exists)	Mileage Transferred or Abandoned out of your Jurisdiction (road still exists)	Mileage Out of Surface Type to Another Surface Type	Mileage Transferred into your Jurisdiction from another Jurisdiction	Mileage into Surface Type from Another Surface Type	Mileage Added By Building New roads (Roads Previously did not exist)	Mileage Change Add columns 2,3,4,5,6,7, & 8	Mileage at end of Reporting Year - add columns 1 & 9
	[+]	[+ or -]	[-]	[-]	[-]	[+]	[+]	[+]	[+ or -]	[+]
(C) Earth - graded & drained	2.162								0	2.162
(E) Gravel - graded & drained	116.298				.19				.19	116.408
(F) Asphalt less than 1" or dust suppressant treated gravel	10.997						.19		.19	11.187
(G-1) Road or Cold Plant mix Asphalt	38.028								0	38.028
(G-2) Hot mix Asphalt pavement	54.485								0	54.485
(J) Other (e.g., concrete)	0.325								0	.325
Total of Improved road mileage (add C,E,F,G-1,G-2,&J)	222.295									222.295
(B) Unimproved	0.871								0	.871
* TOTAL MILEAGE (Add Total of Improved & Unimproved Mileage)	223.166									223.166

WARNING: This Total Mileage also does not represent all mileage in the area of jurisdiction. It does not include, for example, city streets, private roads, Forest Service or BLM roads, or any other roads that may exist, but are not considered (by the jurisdiction) to be part of that jurisdiction's road system. There are, usually, many miles of roads in existence beyond those included in this report.

I certify that the information contained herein is correct to the best of my knowledge and belief.

DATE 11-27-07

SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

OFFICIAL TITLE

PRINT NAME

ADDRESS

LOCAL ROAD MILEAGE REPORT

CLEARWATER
COUNTY

Road Department
HIGHWAY-DISTRICT


1999
FOR YEAR ENDED

Road Surface Type	Existing Mileage at beginning of the Year	Error revision	Mileage obliterated from your Jurisdiction (road no longer exists)	Mileage Transferred or Abandoned out of your Jurisdiction (road still exists)	Mileage Out of Surface Type to Another Surface Type	Mileage Transferred into your Jurisdiction from another Jurisdiction	Mileage into Surface Type from Another Surface Type	Mileage Added By Building New roads (Roads Previously did not exist)	Mileage Change Add columns 2,3,4,5,6,7, & 8	Mileage at end of Reporting Year - add columns 1 & 9
	[+]	[+ or -]	[-]	[-]	[-]	[+]	[+]	[+]	[+ or -]	[+]
(C) Earth - graded & drained	0.540									00.540
(E) Gravel - graded & drained	130.955							.379	.379	131.334
(F) Asphalt treated gravel less than 1"	0.000									0.000
(G-1) Road or Cold Plant mix Asphalt	39.351					284			.284	39.351 39.635
(G-2) Hot mix Asphalt pavement	46.724					284			284	47.008 46.724
Other	0.325									.325
Total of Improved road mileage (add C,E,F,G-1,G-2,&J)	217.895					.284		.379	.663	218.558
(B) Unimproved	1.826									1.826
* TOTAL MILEAGE (Add Total of Improved & Unimproved Mileage)	219.721					.284		.379	.663	220.384

WARNING

* The Total Mileage (improved plus unimproved) on this report does not include gated roads. This Total Mileage also does NOT represent all mileage in the area of jurisdiction. It does not include, for example, city streets, private roads, Forest Service or BLM roads, or any other roads that may exist, but are not considered (by the jurisdiction) to be part of that jurisdiction's road system. There are, usually, many miles of roads in existence beyond those included in this report.

I certify that the information contained herein is correct to the best of my knowledge and belief.


SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

Supervisor
OFFICIAL TITLE

DATE 11-15-99

P.O. Box 812
Orofino, Idaho 83544
ADDRESS

RECEIVED SEP 21 1993
Sent 10/22/93



LOCAL ROAD MILEAGE REPORT

CLEARWATER
COUNTY

COUNTY
HIGHWAY DISTRICT

For Year Ended 1993

TYPE OF ROAD	Existing System Mileage at beginning of the Year (+ OR -) Column 1 2	REVISIONS	MILEAGE CHANGES DURING THE YEAR						Existing Mileage at end of Reporting Year. (Column 2 plus or minus column 9) 10
		To correct previous errors or To down-grade Improvement Level (+ OR -) 3	MILEAGE TRANSFERRED		CHANGES DUE TO CONSTRUCTION		Mileage Abandoned or Deleted from the System (-) 8	Net Change in Mileage during the Year (Columns 3 thru 8) (+ OR -) 9	
			Into System from Another System (+) 4	Out Of System to Another System (-) 5	Mileage Constructed (+) 6	Mileage Replaced by Construction (-) 7			
A. Primitive									
B. Unimproved	5.01								5.01
C. Graded & Drained Earth	1.80								1.80
E. Graded & Drained Gravel	143.76			8					135.76
Low Type Bituminous Surf. (Includes Types F and G-1)	52.84		8						60.84
High Type Bituminous Surf. (Type G-2)	14.35								14.35
J. Portland Cement Concrete									
TOTAL	217.76								217.76

I certify that the information contained herein is correct to the best of my knowledge and belief.

Date 10/22/93

Larry Nygaard
SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

Supervisor
OFFICIAL TITLE

Box 812 Orofino Id 83544
ADDRESS

NOTE: Please report ONLY those changes that occurred DURING THE REPORTING YEAR. Refer to instructions on reverse side of this form, in addition to the following information:

The purpose of this report is to reflect mileage changes by surface types on all county and highway district rural road systems in Idaho. The data reported should not include streets or roads within the limits of incorporated cities or villages.

INSTRUCTIONS FOR MARKING MAPS

COLOR CODE

Mark on the maps only those roads involved in the following kinds of activity during the reporting year: construction; reconstruction; transfers into and out of the system; and deletions and abandonments.

The following color code has been adopted for Statewide use to represent the several surface types. Please use this color code when marking your reporting maps.

- (A) Primitive Light Green
- (B) Unimproved Brown
- (C) Graded and Drained Blue
- (E) Gravel or Stone Red
- (F,G,J) Bituminous or
Other Paved Surfaces Black
- (K) Deleted or Abandoned Yellow



LOCAL ROAD MILEAGE REPORT

CLEARWATER
COUNTY

COUNTY
HIGHWAY DISTRICT

For Year Ended 1994

TYPE OF ROAD	Existing System Mileage at beginning of the Year (+ OR -)	REVISIONS	MILEAGE CHANGES DURING THE YEAR						Existing Mileage at end of Reporting Year. (Column 2 plus or minus column 9)
		To correct previous errors or To down-grade Improvement Level (+ OR -)	MILEAGE TRANSFERRED		CHANGES DUE TO CONSTRUCTION		Mileage Abandoned or Deleted from the System (-)	Net Change in Mileage during the Year (Columns 3 thru 8) (+ OR -)	
			Into System from Another System (+)	Out Of System to Another System (-)	Mileage Constructed (+)	Mileage Replaced by Construction (-)			
Column 1	2	3	4	5	6	7	8	9	10
A. Primitive									
B. Unimproved	5.01								5.01
C. Graded & Drained Earth	1.80								1.80
E. Graded & Drained Gravel	135.76			2.3	.64	.32			133.78
Low Type Bituminous Surf. (Includes Types F and G-1)	60.84		2.3			.22			62.92
High Type Bituminous Surf. (Type G-2)	14.35								14.35
J. Portland Cement Concrete									
TOTAL	217.76								217.86

I certify that the information contained herein is correct to the best of my knowledge and belief.

Date 11/2/94

Larry Nygaard
SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

Supervisor
OFFICIAL TITLE

P.O. Box 812 Orofino Id.
ADDRESS 83544

NOTE: Please report ONLY those changes that occurred DURING THE REPORTING YEAR. Refer to instructions on reverse side of this form, in addition to the following information:

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(E) Gravel or Stone Red
(F,G,J) Bituminous or
Other Paved Surfaces Black
(K) Deleted or Abandoned Yellow

DH-1510 8-74



LOCAL ROAD MILEAGE REPORT

CLEARWATER
COUNTY

COUNTY

 For Year Ended **1995**
HIGHWAY DISTRICT

TYPE OF ROAD	Existing System Mileage at beginning of the Year (+ OR -)	REVISIONS	MILEAGE CHANGES DURING THE YEAR						Existing Mileage at end of Reporting Year. (Column 2 plus or minus column 9)
		To correct previous errors or To down-grade Improvement Level (+ OR -)	MILEAGE TRANSFERRED		CHANGES DUE TO CONSTRUCTION		Mileage Abandoned or Deleted from the System (-)	Net Change in Mileage during the Year (Columns 3 thru 8) (+ OR -)	
			Into System from Another System (+)	Out Of System to Another System (-)	Mileage Constructed (+)	Mileage Replaced by Construction (-)			
Column 1	2	3	4	5	6	7	8	9	10
A. Primitive									
B. Unimproved	5.01								
C. Graded & Drained Earth	1.80								
E. Graded & Drained Gravel	133.78								
Low Type Bituminous Surf. (Includes Types F and G-1)	62.92								
High Type Bituminous Surf. (Type G-2)	14.35								
J. Portland Cement Concrete									
TOTAL	217.86								

I certify that the information contained herein is correct to the best of my knowledge and belief.

 Date **November 20, 1995**

SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

Chairman

OFFICIAL TITLE

 P. O. Box 536, Orofino, ID
ADDRESS

NOTE: Please report ONLY those changes that occurred DURING THE REPORTING YEAR. Refer to instructions on reverse side of this form, in addition to the following information:

The purpose of this report is to reflect mileage changes by surface types on all county and highway district rural road systems in Idaho. The data reported should not include streets or roads within the limits of incorporated cities or villages.

INSTRUCTIONS FOR MARKING MAPS

Mark on the maps only those roads involved in the following kinds of activity during the reporting year: construction; reconstruction; transfers in-to and out of the system; and deletions and abandonments.

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(C) Graded and Drained Blue
(E) Gravel or Stone Red
(F,G,J) Bituminous or
Other Paved Surfaces Black
(K) Deleted or Abandoned Yellow



LOCAL ROAD MILEAGE REPORT

CLEARWATER
COUNTY

HIGHWAY DISTRICT

For Year Ended 1996

TYPE OF ROAD	Existing System Mileage at beginning of the Year (+ OR -)	REVISIONS	MILEAGE CHANGES DURING THE YEAR						Existing Mileage at end of Reporting Year. (Column 2 plus or minus column 9)
		To correct previous errors or To down-grade Improvement Level (+ OR -)	MILEAGE TRANSFERRED		CHANGES DUE TO CONSTRUCTION		Mileage Abandoned or Deleted from the System (-)	Net Change in Mileage during the Year (Columns 3 thru 8) (+ OR -)	
			Into System from Another System (+)	Out Of System to Another System (-)	Mileage Constructed (+)	Mileage Replaced by Construction (-)			
Column 1	2	3	4	5	6	7	8	9	10
A. Primitive									
B. Unimproved	5.01								5.01
C. Graded & Drained Earth	1.80								1.80
E. Graded & Drained Gravel	133.78								133.78
Low Type Bituminous Surf. (Includes Types F and G-1)	62.92								62.92
High Type Bituminous Surf. (Type G-2)	14.35								14.35
J. Portland Cement Concrete									
TOTAL	217.86								217.86

I certify that the information contained herein is correct to the best of my knowledge and belief.

Date 10-28-96

Jim Montambo
SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

Supervisor
OFFICIAL TITLE

Box 812 Orofino ID
ADDRESS
83544

NOTE: Please report ONLY those changes that occurred DURING THE REPORTING YEAR. Refer to instructions on reverse side of this form, in addition to the following information:

The purpose of this report is to reflect mileage changes by surface types on all county and highway district rural road systems in Idaho. The data reported should not include streets or roads within the limits of incorporated cities or villages.

INSTRUCTIONS FOR MARKING MAPS

Mark on the maps only those roads involved in the following kinds of activity during the reporting year: construction; reconstruction; transfers into and out of the system; and deletions and abandonments.

The following color code has been adopted for Statewide use to represent the several surface types. Please use this color code when marking your reporting maps.

COLOR CODE

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- (C) Graded and Drained Blue
- (E) Gravel or Stone Red
- (F,G,J) Bituminous or
Other Paved Surfaces Black
- (K) Deleted or Abandoned Yellow



MICHAEL TODD AND COMPANY, INCORPORATED

1401 WILLIAM • OMAHA, NEBRASKA 68108
402-342-6376 FAX: 402-342-3663

CALL TOLL FREE: 1-800-228-7076

REPORT

For Year Ended 1997

CHANGES DURING THE YEAR				Existing Mileage at end of Reporting Year (Column 2 plus or minus column 9)
CHANGES DUE TO CONSTRUCTION		Mileage Abandoned or Deleted from the System	Net Change in Mileage during the Year (Columns 3 thru 8)	
Mileage instructed	Mileage Replaced by Construction			
(+)	(-)	(-)	(+ or -)	
6	7	8	9	10
			6.985-	126.795
			6.985+	69.905
				217.860

Mileage Needed
Beginning of Lur Fords to End of tack 2.079
Length of N. Valley tack 0.300
Upper Fords End of Pave to End of tack 0.960
Tack Length - Crow Bench - 0.599
Deer Creek 3rd Bridge to End of Tack 2.121
Orofino Creek Dairy to End of tack 0.604
New Hope Entrance to End of tack 0.322

6.985

126.795
69.905

Date 10/30/97

P.O. Box 812 Orofino
ADDRESS

MUNICIPAL SUPPLIES

BACK BROOMS
GUTTER BROOMS
GUTTER BROOM WIRE
SWEEPER PARTS
TRAFFIC SIGNS

SIGN POSTS
STROBE LIGHTS
ROTATING LIGHTS
FLASHERS
SHOVELS

SEWER RODS, TOOLS

LOG CHAINS
TIRE CHAINS
CHAIN FITTINGS
GRADER BLADES
PLOW BLADES

TRAFFIC CONES

BARRICADES
HARD HATS
LINERS
CROSBY PRODUCTS
OSHA LINES

REPORTING YEAR

the following information:

surface types on all county and
ted should not include streets

or roads within the limits of incorporated cities or villages.

INSTRUCTIONS FOR MARKING MAPS

Mark on the maps only those roads involved in the following kinds of activity during the reporting year: construction; reconstruction; transfers into and out of the system; and deletions and abandonments.

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- (A) Primitive ----- Light Green
- (B) Unimproved ----- Brown
- (C) Graded and Drained ----- Blue
- (E) Gravel or Stone ----- Red
- (F,G,J) Bituminous or
Other Paved Surfaces ----- Black
- (K) Deleted or Abandoned ----- Yellow



LOCAL ROAD MILEAGE REPORT

CLEARWATER

For Year Ended 1997

COUNTY

HIGHWAY DISTRICT

TYPE OF ROAD	Existing System Mileage at beginning of the Year (+ or -)	REVISIONS	MILEAGE CHANGES DURING THE YEAR						Existing Mileage at end of Reporting Year (Column 2 plus or minus column 9)
		To Correct Previous errors -- or -- To down-grade Improvement Level (+ or -)	MILEAGE TRANSFERRED		CHANGES DUE TO CONSTRUCTION		Mileage Abandoned or Deleted from the System (-)	Net Change in Mileage during the Year (Columns 3 thru 8) (+ or -)	
			Into System from Another System (+)	Out of System to Another System (-)	Mileage Constructed (+) *	Mileage Replaced by Construction (-)			
Column 1	2	3	4	5	6	7	8	9	10
A. Primitive	0.000								
B. Unimproved	5.010								
C. Graded & Drained Earth	1.800								
E. Graded & Drained Gravel	133.780			6.985				6.985-	126.795
Low Type Bituminous Surf. (includes Types F and G-I)	62.920		6.985					6.985+	69.905
High Type Bituminous Surf. (Type G-2)	14.350								
Portland Cement Concrete	0.000								
TOTAL	217.860								217.860

I certify that the information contained herein is correct to the best of my knowledge and belief.

Date 10/30/97
P.O. Box 912 Opa-Lima
 ADDRESS

Jim Montano
 SIGNATURE OF COUNTY OR HIGHWAY
 DISTRICT OFFICIAL

SUPERVISOR
 OFFICIAL TITLE

NOTE: Please report **ONLY** those changes that occurred **DURING THE REPORTING YEAR**
 Refer to instructions on reverse side of this form, in addition to the following information:

The purpose of this report is to reflect mileage changes by surface types on all county and highway district rural road systems in Idaho. The data reported should not include streets or roads within the limits of incorporated cities or villages.

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 (E) Gravel or Stone ----- Red
 (F,G,I) Bituminous or
 Other Paved Surfaces ----- Black
 (K) Deleted or Abandoned ----- Yellow

LOCAL ROAD MILEAGE REPORT

CLEARWATER

For Year Ended 1998

County

Highway District

TYPE OF ROAD	Existing System Mileage at beginning of the Year (+ or -	REVISIONS	MILEAGE CHANGES DURING THE YEAR						Existing Mileage at end of Reporting Year (Column 2 plus or minus column 9)
		To correct previous — or — To down-grade Improvement Level (+ or -	MILEAGE TRANSFERRED		CHANGES DUE TO CONSTRUCTION		Mileage Abandoned or Deleted from the Sytem (-)	Net Change in Mileage during the Year (Columns 3 thru 8) (+ or -	
			Into System from Another System (+	Out of System to Another System (-)	Mileage Constructed (+	Mileage Replaced by Construction (-)			
Column	2	3	4	5	6	7	8	9	10
A. Primitive	0.000								
B. Unimproved	5.010			-3.68				-3.68	1.330
C. Graded and Drained Earth	1.800		+2.119	-1.80				+0.319	2.119
E. Graded and Drained Gravel	126.795	+8.744	+4.344					+13.088	139.883
Low Type Bituminous Surf. (Includes Types F	69.905	-26.790						-26.790	43.115
High Type Bituminous Surf. (Type G-2)	14.350	+21.994						+21.994	36.344
Portland Cement Concrete	0.000	+0.333						+0.333	0.333
TOTAL	217.850								223.124

5.264

I certify that the information contained herein is correct to the best of my knowledge and belief.

Date 11/2/88

Carl E. Rickett

Clearwater Co. Comm.

Drobing Id.

SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

OFFICIAL TITLE

ADDRESS

NOTE: Please report ONLY those changes that occurred DURING THE REPORTED YEAR. Refer to instructions on reverse side of this form, in addition to the following information:

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- (E) Gravel or Stone Red
- (F,G,J) Bituminous or
Other Paved Surfaces Black
- (K) Deleted or Abandoned Yellow

LOCAL ROAD MILEAGE REPORT

CLEARWATER
COUNTY

Road Department
HIGHWAY DISTRICT

1999
FOR YEAR

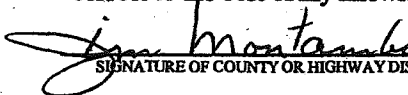
Road Surface Type	Existing Mileage at Beginning of the Year	Change	Mileage Obliterated from your Jurisdiction (road no longer exists)	Mileage Transferred or Abandoned out of your Jurisdiction (road still exists)	Mileage Out of Surface Type to Another Surface Type	Mileage Transferred into your Jurisdiction from another Jurisdiction	Mileage into Surface Type from Another Surface Type	Mileage Added By Building New roads (Roads previously did not exist)		
	[+]	[+ or -]	[-]	[-]	[-]	[+]	[+]	[+]		
(C) Earth - graded & drained	0.540									00.540
(E) Gravel - graded & drained	130.955							.379	.379	131.334
(F) Asphalt treated gravel less than 1"	0.000									0.000
(G-1) Road or Cold Plant mix Asphalt	39.351					.284		.284		39.635
(G-2) Hot mix Asphalt pavement	46.724									46.724
(d) Other (e.g. concrete)	0.325									.325
Total of Improved road mileage (add C,E,F,G-1,G-2,&J)	217.895					.284		.379	.663	218.558
(B) Unimproved	1.826									1.826
* TOTAL MILEAGE (Add Total of Improved & Unimproved Mileage)	219.721					.284		.379	.663	220.384

Curtis
HAS Notes
+ Reports
for 1999

WARNING

* The Total Mileage (improved plus unimproved) on this report does not include gated roads . This Total Mileage also does NOT represent all mileage in the area of jurisdiction. It does not include, for example, city streets, private roads, Forest Service or BLM roads, or any other roads that may exist, but are not considered (by the jurisdiction) to be part of that jurisdiction's road system. There are, usually, many miles of roads in existence beyond those included in this report.

I certify that the information contained herein is correct to the best of my knowledge and belief.


SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

Supervisor
OFFICIAL TITLE

DATE 11-15-99

P.O. Box 812
Orofino, Idaho 83544
ADDRESS

LOCAL ROAD MILEAGE REPORT

CLEARWATER

For Year Ended

1998

County

Highway District

TYPE OF ROAD	Existing System Mileage at beginning of the Year (+ or -	REVISIONS	MILEAGE CHANGES DURING THE YEAR						Existing Mileage at end of Reporting Year (Column 2 plus or minus column 9)
		To correct previous — or — To down-grade Improvement Level (+ or -	MILEAGE TRANSFERRED		CHANGES DUE TO CONSTRUCTION		Mileage Abandoned or Deleted from the Sytem (-)	Net Change in Mileage during the Year (Columns 3 thru 8) (+ or -	
			Into System from Another System (+	Out of System to Another System (-)	Mileage Constructed (+	Mileage Replaced by Construction (-)			
Column	2	3	4	5	6	7	8	9	10
A. Primitive	0.000								
B. Unimproved	5.010			-3.68				-3.68	1.330
C. Graded and Drained Earth	1.800		+2.119	-1.80				+0.319	2.119
E. Graded and Drained Gravel	126.795	+8.744	+4.344					+13.088	139.883
Low Type Bituminous Surf. (Includes Types F	69.905	-26.790						-26.790	43.115
High Type Bituminous Surf. (Type G-2)	14.350	+21.994						+21.994	36.344
J. Portland Cement Concrete	0.000	+0.333						+0.333	0.333
TOTAL	217.850								223.124

I certify that the information contained herein is correct to the best of my knowledge and belief.

Date 11/2/98

5.264

Carl L. Pickett

Clearwater Co. Comm.

Orangefield, ID.

SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

OFFICIAL TITLE

ADDRESS

NOTE:

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(C) Graded and Drained Blue
(E) Gravel or Stone Red
(F,G,J) Bituminous or
Other Paved Surfaces Black
(K) Deleted or Abandoned Yellow

CLEARWATER COUNTY ROAD DEPARTMENT

JAMES MONTAMBO, SUPERVISOR

TELEPHONE 208-476-4813

Box 812 • Orofino, ID 83544-0812

To: Jim Hill

State of Idaho, Dept of Transportation
Planning Section
3311 West State Street
Boise, ID 83707

1/14/99

*IN 1954 County
HAD 276.8 miles
w/ 189 miles of
GRAVEL*

From: Cassie Bansemer, Secretary
Clearwater County Road Dept.
P.O. Box 812 Orofino, ID 83544

Re: Local Mileage Reports

Dear Jim,

I have been going over the local mileage reports that Randy Curtis prepared and sent previously. I have made some minor corrections and now resubmitting them for your approval. It appears to me that all the corrections that Randy recorded were errors in figures only. The actual changes in road surfaces have been recorded in previous years. I did include one map that shows all the previous changes that Randy shows in his notes which I have also included for you. The notes may help explain the corrections in the figures (miles) that are listed in the 'to correct previous' column on the local mileage report. If you still find problems please let me know ASAP by calling the above listed number.

Sincerely,

Cassie Bansemer

Cassie Bansemer, Secretary
Clearwater County Road Dept.

*Note: Changes to Lower Fords Creek Gravel + G-1 totals
are as per Jim Hill call on 1-21-99*

LOCAL ROAD MILEAGE REPORT

CLEARWATER

County

Highway District

For Year Ended

1998

TYPE OF ROAD	Existing System Mileage at beginning of the Year (+ or -	REVISIONS	MILEAGE CHANGES DURING THE YEAR						Existing Mileage at end of Reporting Year (Column 2 plus or minus column 9)
		To correct previous --- or --- To down-grade Improvement Level (+ or -	MILEAGE TRANSFERRED		CHANGES DUE TO CONSTRUCTION		Mileage Abandoned or Deleted from the Sytem (-)	Net Change in Mileage during the Year (Columns 3 thru 8) (+ or -	
			Into System from Another System (+	Out of System to Another System (-)	Mileage Constructed (+	Mileage Replaced by Construction (-)			
Column	2	3	4	5	6	7	8	9	10
A. Primitive	0.000								
B. Unimproved	5.010	- 3.680						- 3.680	1.330
C. Graded and Drained Earth	1.800	+ .319						+ .319	2.119
E. Graded and Drained Gravel	126.795	+12.336						+12.336	139.131
Low Type Bituminous Surf. (Includes Types F	69.905	-28.022						-28.022	41.883
High Type Bituminous Surf. (Type G-2)	14.350	+23.994						+23.994	38.344
J. Portland Cement Concrete	0.000	+ .333						+ .333	.333
TOTAL	217.860	+ 5.280						+ 5.280	223.140

I certify that the information contained herein is correct to the best of my knowledge and belief.

Date 1/13/99

in Montana
SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

Supervisor

OFFICIAL TITLE

P.O. Box 812 Orofino, ID 83544

ADDRESS

NOTE:

Please report **ONLY** those changes that occurred **DURING THE REPORTED YEAR**
Refer to instructions on reverse side of this form, in addition to the following information:

The purpose of this report is to reflect the mileage changes by surface types on all county and highway district rural road systems in Idaho. The data reported should not include streets or roads within the limits of incorporated cities or villages.

INSTRUCTIONS FOR MARKING MAPS

Mark on the maps only those roads involved in the following kinds of activity during the reporting year: construction; reconstruction; transfers into and out of the system; and deletions and abandonments.

The following color code has been adopted for Statewide use to represent the several surface types. Please use this color code when marking your reporting maps.

COLOR CODE

- (A) Primitive Light Green
- (B) Unimproved Brown
- (C) Graded and Drained Blue
- (E) Gravel or Stone Red
- (F,G,J) Bituminous or
Other Paved Surfaces Black
- (K) Deleted or Abandoned Yellow

LOCAL ROAD MILEAGE SUMMARY FOR COUNTY DATA
BASED ON H.P.S. ROAD INVENTORY

15:51 WEDNESDAY, AUGUST 5, 1987

JURISDICTION CLEARWATER COUNTY

ROADNUMBER	SURFACE TYPES							TOTAL
	PRIMITIVE	UNIMPROVED	EARTH	GRAVEL	G-1	G-2	CONCRETE	
	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	
	SUM	SUM	SUM	SUM	SUM	SUM	SUM	
00001 Cuddy EXT. 009191				0.497				0.497
00003 THREE BEAR 002668				0.469				0.469
00009 BROWN 002628				2.616				2.616
0001A THREE BEAR 009192				3.286				3.286
00011 FIREMOUNT 006432		0.079		0.079				0.079
00017 Gil. Cemetery 006426				0.941				0.941
00019 EUREKA RIDGE 002664				2.711				2.711
00021 STODARD 002652				0.500				0.500
00023 HIGH VALLEY 002657				1.045				1.045
00029 HUCKLEBERRY 001037				1.383				1.383
0003A DAISY 002625				2.690				2.690
0003B NEWMAN 002629				1.501				1.501
00039 COOPER RD 002678				1.335				1.335
00041 BASHAW 001071				1.396				1.396
00046 MASON BUTTE 002623				2.515				2.515
00048 CUDDY ROAD 002624				1.494				1.494
00050 LOSETH 002669				3.635				3.635
00051 HIGHWAY DIST 002677				3.059				3.059
00052 FREEMAN CR. 001080				6.063	24.368	2.0		10.431
00054 MIDDLE RD 001077		0.685	0.685	0.374	3.541			4.600

0.0 0.685 34.497 5.969 2.0 43.124

(CONTINUED)

34.530 wrong

SUMMER
CE. 2 CR

ETHEL
CHANNEL

MCTUER

Page 1

LOCAL ROAD MILEAGE SUMMARY FOR COUNTY DATA
BASED ON H.P.S. ROAD INVENTORY

15:51 WEDNESDAY, AUGUST 5, 1987

JURISDICTION CLEARWATER COUNTY

ROADNUMBER		SURFACE TYPES							TOTAL
		PRIMITIVE	UNIMPROVED	EARTH	GRAVEL	G-1	G-2	CONCRETE	
		LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	
		SUM	SUM	SUM	SUM	SUM	SUM	SUM	
00056	LOWER WELLS BENCH 002659				3.069	3.242	0.173		3.242
00058	SOUTH ROAD 009196				7.103	1.113			8.216
00060	SUNNY SIDE 002363				2.599				2.599
00062	BOBBIT BENCH 006544			2.090	2.09				2.090
00066	MILLER 002343				5.276				5.276
00068	UPPER FOROS CR. 002675				18.882	2.044			20.926
0007A	VENNI RD 002627					1.290			1.290
0007B	MERIDIAN 002631				1.500				1.500
0007C	CHESAPEAKE COURT HSAHKA 002638				0.135				0.135
0007D	FRASER LANE 002637				0.212				0.212
00072	TOTEM 002648				1.710				1.710
0011A	3RD AVE					0.088			0.088
0011B	140TH ST 006433					0.052			0.052
0011C	2ND AV 006437					0.207			0.207
0011D	138TH ST 006438					0.171			0.171
0013A	139TH ST & 4TH AVE 006435					0.159			0.159
0013B	O'BRIEN 002644				1.417				1.417
0015L	LAUDEN BACK 002634		0.233		0.077	0.233			0.310
0017A	PREAST 002656		0.478	0.478	1.749				2.227
0017B	BELL 002649				0.872				0.872

0.0 0.478 43.622 8.599

52.699

(CONTINUED)

LOCAL ROAD MILEAGE SUMMARY FOR COUNTY DATA
BASED ON H.P.S. ROAD INVENTORY

15:51 WEDNESDAY, AUGUST 5, 1987 1C

JURISDICTION CLEARWATER COUNTY

ROADNUMBER	SURFACE TYPES							TOTAL
	PRIMITIVE	UNIMPROVED	EARTH	GRAVEL	G-1	G-2	CONCRETE	
	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	
	SUM	SUM	SUM	SUM	SUM	SUM	SUM	
0017C TRANSFER STA 002480				0.227				0.227
0017D Nudist Colony 006584				0.203				0.203
0019A EUREKA LOOP 002662				8.462				8.462
0019B WILSON HTS 002651					0.258			0.258
0019C OLD DUMP 00265A					0.411			0.411
0019D County Line 009724				1.869				1.869
0021A CROCKET BENCH 002653				1.275				1.275
0021B DENT 005250				8.740	8.74-5.909	5.614	.295	14.649
0023A WEST WOOD TER 009739				0.588				0.588
0023B HONKOL ADD 002671					0.282			0.282
0023C DEBERTIN DR. 002632					0.380			0.380
0025B CARLOCK 002672				0.418				0.418
0041A RUDD RD. 002666				7.597				7.597
0041C Old Ruud 002669		0.234						0.234
0048A DAISY STAGE 002626		0.136		0.965				1.101
0048C CAVENDISH 005240						14.346		14.346
0052A meadow Rd 002621		0.451	0.451	2.775				3.226
0054A St. Johnson Rd 002663		0.713		0.713				0.713
0054B HERNDON RANCH 002665				1.205				1.205
0056A GRANGEMONT 005260					7.0423-425	16.354	.019	23.422

0.37 0.451 26.297 17.111 36.344 .314

80.869
80.887

(CONTINUED)

LOCAL ROAD MILEAGE SUMMARY FOR COUNTY DATA
BASED ON H.P.S. ROAD INVENTORY

15:51 WEDNESDAY, AUGUST 5, 1987 11

JURISDICTION CLEARWATER COUNTY

ROADNUMBER	SURFACE TYPES							TOTAL
	PRIMITIVE	UNIMPROVED	EARTH	GRAVEL	G-1	G-2	CONCRETE	
	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	
	SUM	SUM	SUM	SUM	SUM	SUM	SUM	
0058A CAYON CR Cut off 002661				1.559	0.094			1.653
0058B ARNESON Rd 003694 6585		0.2721		0.55	0.284			0.556
0058C BARN MILL 002667				1.950				1.950
0058D OLD AHSANKA GRD 006597				2.179				2.179
0058E WEST WOOD TERRACE 004805				0.564				0.564
0058F WEST WOOD TERRACE 002658				0.067				0.067
0060A OLD PECK GRD 002634		1.1051	0.505	2.185	1.585			2.690
0060B UPPER HALL 002635				0.540				0.540
0060C LOWER HALL 002639		0.5981		1.289	0.699			1.289
0060D AHSANKA - Power House 002641				0.158	1.236			1.394
0060E PART OF EUREKA Loop 002663				0.738				0.738
0060F DAVAZ Dodge Rd 006444				0.488				0.488
0060G AHSANKA 004804				0.355				0.355
0062A 130TH ST 6439 006441		0.0421			0.252	0.210		0.252
0062B Hunter Drive 006434		0.290						0.290
0062C 136TH ST 51st Ave 006432					319	0.338	0.019	0.338
0062D 137TH ST 006437					0.078			0.078
0062E DEER CR. (OLD) 002673				2.889	2.45	0.367		3.256
0062F 2nd Ave					0.296			0.296
0063C Hwy DIST Browns Cr Rd				5.051	0.456			5.507

290 505 15.517 4.725 019 19.039

(CONTINUED)

Page 5

LOCAL ROAD MILEAGE SUMMARY FOR COUNTY DATA
BASED ON H.P.S. ROAD INVENTORY

15:51 WEDNESDAY, AUGUST 5, 1987 .1

JURISDICTION CLEARWATER COUNTY

ROADNUMBER	SURFACE TYPES							TOTAL
	PRIMITIVE	UNIMPROVED	EARTH	GRAVEL	G-1	G-2	CONCRETE	
	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	LENGTH	
	SUM	SUM	SUM	SUM	SUM	SUM	SUM	
0064A HARMONY HTS 001036				5.048 7.618	3.96 1.390			9.008
0064B off O'Brien 6586		0.278			0.041			0.319
0066A DOBSON RD 002647		0.139		0.634				0.773
0066B CURPMAN 002640				1.032				1.032
0066C CASCADE 004807				3.563				3.563
0068A CROW BEACH 002676		0.333		1.817 1.854	0.370			2.187
0072A Albers Spur 006595		0.253						0.253
0072B LOWER FORDS 000120				7.856 9.942	2.4 0.314			10.256
0072C HIGHWAY DIST 006587				0.134				0.134
TOTAL		6.311 6.20	2.090	160.318 19.950	48.690 1.271	14.346 2		231.755 22.201

TOTALS

1.330
2.119
139.431
41.883
38.344
0.333
223.140

1.33
2.119
139.883
41.883
38.344
0.333
223.12

old total
Road Number 231.755
51 2677 - 3.059
63E 1029 - 5.507
72C 6587 - 0.134
225.157
Changed Jurisdiction
(to Clearwater Hwy. Dist.)

total 223.055
62E 2673 + 0.066 Deer Creek Rd
56A 5260 + 0.019 Granger Road
(Concrete Bridges)
223.140

Note: Footage on Deer Creek Road including old Decker is correct. By



LOCAL ROAD MILEAGE REPORT

CLEARWATER

For Year Ended 1999 INVENTORY

COUNTY

HIGHWAY DISTRICT

TYPE OF ROAD	Existing System Mileage at beginning of the Year (+ or -)	REVISIONS	MILEAGE CHANGES DURING THE YEAR						Existing Mileage at end of Reporting Year (Column 2 plus or minus column 9)
		To Correct Previous errors -- or -- To down-grade Improvement Level (+ or -)	MILEAGE TRANSFERRED		CHANGES DUE TO CONSTRUCTION		Mileage Abandoned or Deleted from the System (-)	Net Change in Mileage during the Year (Columns 3 thru 8) (+ or -)	
			Into System from Another System (+)	Out of System to Another System (-)	Mileage Constructed (+)	Mileage Replaced by Construction (-)			
Column 1	2	3	4	5	6	7	8	9	10
A. Primitive	0.000							0.000	0.000
B. Unimproved	1.330	0.496						0.496	1.826
C. Graded & Drained Earth	2.119	-1.579						-1.579	0.540
E. Graded & Drained Gravel	134.554	-3.599						-3.599	130.955
Low Type Bituminous Surf. (includes Types F and G-1)	42.847	-3.496						-3.496	39.351
High Type Bituminous Surf. (Type G-2)	38.344	8.380						8.380	46.724
J. Portland Cement Concrete	0.333	-0.008						-0.008	0.325
TOTAL	219.527	0.194	0.000	0.000	0.000	0.000	0.000	0.194	219.721

I certify that the information contained herein is correct to the best of my knowledge and belief.

Date 2-16-99

Carl C. Pickett

Comm. Clearwater County

Dorling Jr

SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

OFFICIAL TITLE

Commissioner

ADDRESS

NOTE: Please report ONLY those changes that occurred DURING THE REPORTING YEAR
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(C) Graded and Drained ----- Blue
(E) Gravel or Stone ----- Red
(F,G,J) Bituminous or
Other Paved Surfaces ----- Black
(K) Deleted or Abandoned ----- 485 Yellow

2000 Report

Road #
Middle

- 1 001077 - CHANGE B to C and add 1.1 miles
(BEHIND THE GATE)
- 2 002634 - CHANGE B to C 0.752 miles 1.5
2.302
- 3 002480 - Add .3 miles of E ✓
Trans Station
- 4 002525 - CHANGE MP 5.1 to 5.4 to G-2 ✓
Well St. 1st
G1 to G2 .3
- 5 002675 - CHANGE MP 4.1 to 5.5 to F ✓
Upper F 1st
E to F 1.4 m
- ~~CC 7676 - CHANGE E to E~~
- 6 007505 - ADD .25 mile of C ✓
Cooks Cemetery
- 7 006505 - CHANGE B-C Add .2 miles ✓
Albers
- 8 * - Add .3 miles (E) HAULOCK ROAD ✓
Fr
- 9 006441 - CHANGE E-G2 .052 miles ✓
Ansahke
- 10 002641 - SHOW A to G1 to RR TRACK .050

JURISDICTION MAP

- 11 HAULOCK GRADE - Add .3 miles
- 12 TRANSFER STA ROAD - Add .3 miles
- 13 CC 7641 - SHOW Conn. to RR TRACK

B to C	Add to E	To G2	From G1	To F	From E	To G1
-	+	4.9	4	5	5	10
12.76 = 2.00	3.8 = .6	+ .352	- .3	+1.4	-1.4	+ .050
↑	↑				9	
-82.052	+C = 2.00	already corrected on last map			- .052	
					= 1.452	
					10	
					- .050	
					= 1.502	

LOCAL ROAD MILEAGE REPORT

CLEARWATER

2000

COUNTY

HIGHWAY DISTRICT

FOR YEAR ENDED

	1	2	3	4	5	6	7	8	9	10
Road Surface Type	Existing Mileage at beginning of the Year	Error revision	Mileage obliterated from your Jurisdiction (road no longer exists)	Mileage Transferred or Abandoned out of your Jurisdiction (road still exists)	Mileage Out of Surface Type to Another Surface Type	Mileage Transferred into your Jurisdiction from another Jurisdiction	Mileage into Surface Type from Another Surface Type	Mileage Added By Building New roads (Roads Previously did not exist)	Mileage Change Add columns 2,3,4,5,6,7, & 8	Mileage at end of Reporting Year - add columns 1 & 9
	[+]	[+ or -]	[-]	[-]	[-]	[+]	[+]	[+]	[+ or -]	[+]
(C) Earth - graded & drained	0.540	2.302								2.842
(E) Gravel - graded & drained	131.334	0.139						+ .6	- .852	131.221
(F) Asphalt treated gravel less than 1"	0.000		-				1.4		+1.4	1.4
(G-1) Road or Cold Plant mix Asphalt	39.351	0.246							- .352	39.245
(G-2) Hot mix Asphalt pavement	47.008						.352		+ .352	47.36
(J) Other (e.g., concrete)	0.325									.325
Total of Improved road mileage (add C,E,F,G-1,G-2,&J)	218.558									222.392
(B) Unimproved	1.826	1.097								1.826
* TOTAL MILEAGE (Add Total of Improved & Unimproved Mileage)	220.384									224.218

WARNING

*This Total Mileage also does not represent all mileage in the area of jurisdiction. It does not include, for example, city streets, private roads, Forest Service or BLM roads, or any other roads that may exist, but are not considered (by the jurisdiction) to be part of that jurisdiction's road system. There are, usually, many miles of roads in existence beyond those included in this report.

I certify that the information contained herein is correct to the best of my knowledge and belief.

Joe Montano
SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

Supervisor
OFFICIAL TITLE

DATE 11/9/00

PO. Box 812
DAPHNE, AL 36520
ADDRESS

487

LOCAL ROAD MILEAGE REPORT

CLEARWATER

2000

COUNTY

HIGHWAY DISTRICT

FOR YEAR ENDED

	1	2	3	4	5	6	7	8	9	10
Road Surface Type	Existing Mileage at beginning of the Year	Error revision	Mileage obliterated from your Jurisdiction (road no longer exists)	Mileage Transferred or Abandoned out of your Jurisdiction (road still exists)	Mileage Out of Surface Type to Another Surface Type	Mileage Transferred into your Jurisdiction from another Jurisdiction	Mileage into Surface Type from Another Surface Type	Mileage Added By Building New roads (Roads Previously did not exist)	Mileage Change Add columns 2, 5, 4, 5, 6, 7, & 8	Mileage at end of Reporting Year - add columns 1 & 9
	[+]	[+ or -]	[-]	[-]	[-]	[+]	[+]	[+]	[+ or -]	[+]
(C) Earth - graded & drained	0.540	0.04 -0- -2.302					0.04 2.052		0.04 2.052	0.04 2.592 2.842
(E) Gravel - graded & drained	131.334	0.139		0.04 -1.802	0.04 -1.802			0.04 +6	0.04 -0.852	0.04 130.571 131.221
(F) Asphalt treated gravel less than 1"	0.000						1.4		+1.4	1.4
(G-1) Road or Cold Plant mix Asphalt	39.351	0.246		0.04 -3.000	0.04 -3.000		0.04 -0.050		0.04 -0.094 -0.352	0.04 37.317 39.245
(G-2) Hot mix Asphalt pavement	47.008						.352		+0.352	47.36
(J) Other (e.g., concrete)	0.325									.325
Total of Improved road mileage (add C,E,F,G-1,G-2,&J)	218.558	0.04 -3.85		0.04 -1.802	0.04 -1.802		0.04 3.854	0.04 -600	0.04 3.037	0.04 221.595 222.392
(B) Unimproved	1.826	1.097		0.04 -2.052	0.04 -2.052				0.04 -0.955	0.04 -0.71 1.826
* TOTAL MILEAGE (Add Total of Improved & Unimproved Mileage)	220.384	0.04 1.482		0.04 -3.854	0.04 -3.854		0.04 3.854	0.04 -600	0.04 2.082	0.04 222.466 224.218

WARNING

*This Total Mileage also does not represent all mileage in the area of jurisdiction. It does not include, for example, city streets, private roads, Forest Service or BLM roads, or any other roads that may exist, but are not considered (by the jurisdiction) to be part of that jurisdiction's road system. There are, usually, many miles of roads in existence beyond those included in this report.

I certify that the information contained herein is correct to the best of my knowledge and belief.

DATE 11/9/00

Don Pox BLD
DEPT. OF TRANSPORTATION
ADDRESS

SUPERVISOR
OFFICIAL TITLE

Signature
SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

LOCAL ROAD MILEAGE REPORT

CLEARWATER

2001

COUNTY

HIGHWAY DISTRICT

FOR YEAR ENDED

Road Surface Type	1 Existing Mileage at beginning of the Year	2 Error revision	3 Mileage obiterated from your Jurisdiction (road no longer exists)	4 Mileage Transferred or Abandoned out of your Jurisdiction (road still exists)	5 Mileage Out of Surface Type to Another Surface Type	6 Mileage Transferred into your Jurisdiction from another Jurisdiction	7 Mileage into Surface Type from Another Surface Type	8 Mileage Added By Building New roads (Roads Previously did not exist)	9 Mileage Change Add columns 2,3,4,5,6,7, &8	10 Mileage at end of Reporting Year - add columns 1 & 9
	[+]	[+ or -]	[-]	[-]	[-]	[+]	[+]	[+]	[+ or -]	[+]
(C) Earth - graded & drained	2.592									2.592
(E) Gravel - graded & drained	130.571				-1.970				-1.970	128.601
(F) Asphalt less than 1" or Dust suppressant treated gravel	1.400									1.400
(G-1) Road or Cold Plant mix Asphalt	39.347				-0.057				-0.057	39.290
(G-2) Hot mix Asphalt avement	47.380						+2.021		+2.021	49.387
(I) Other (e.g., concrete)	0.325									0.325
Total of Improved road mileage (add C,E,F,G-1,G-2,&J)	221.595									221.595
(B) Unimproved	0.871									0.871
* TOTAL MILEAGE (Add Total of Improved & Unimproved Mileage)	222.466									222.466

WARNING

* This Total Mileage also does not represent all mileage in the area of jurisdiction. It does not include, for example, city streets, private roads, Forest Service or BLM roads, or any other roads that may exist, but are not considered (by the jurisdiction) to be part of that jurisdiction's road system. There are, usually, many miles of roads in existence beyond those included in this report.

PLEASE SEND ONLY THE CHECKED UPDATED COMPLIMENTARY MAPS AND DATA TO THE ADDRESS BELOW



ROAD SURFACE MAP



JURISDICTION MAP



DATA AND MAPS ON A CD



PLEASE DO NOT SEND ANY OF THE ABOVE

I certify that the information contained herein is correct to the best of my knowledge and belief.

[Signature]
SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

[Signature]
PROF. ENGR.
OFFICIAL TITLE

DATE 11/1/2001

P.O. BOX 586
OROFIND, IDAHO 83544
ADDRESS

LOCAL ROAD MILEAGE REPORT

CLEARWATER

2002

COUNTY

HIGHWAY DISTRICT

FOR YEAR ENDED

	1	2	3	4	5	6	7	8	9	10
Road Surface Type	Existing Mileage at beginning of the Year	Error revision	Mileage obliterated from your Jurisdiction (road no longer exists)	Mileage Transferred or Abandoned out of your Jurisdiction (road still exists)	Mileage Out of Surface Type to Another Surface Type	Mileage Transferred into your Jurisdiction from another Jurisdiction	Mileage into Surface Type from Another Surface Type	Mileage Added By Building New roads (Roads Previously did not exist)	Mileage Change Add columns 2,3,4,5,6,7, & 8	Mileage at end of Reporting Year - add columns 1 & 9
	[+]	[+ or -]	[-]	[-]	[-]	[+]	[+]	[+]	[+ or -]	[+]
(C) Earth - graded & drained	2.592								0	2.592
(E) Gravel - graded & drained	128.601	+447			-6.034				-5.587	123.014
(F) Asphalt less than 1" or dust surpressant treated gravel	1.400						+1.751		+1.751	3.151
(G-1) Road or Cold Plant mix Asphalt	39.290	-447			-815				-1.262	38.028
(G-2) Hot mix Asphalt pavement	49.387						+5.098		+5.098	54.485
(J) Other (e.g., concrete)	0.325								0	.325
Total of Improved road mileage (add C,E,F,G-1,G-2,&J)	221.595								0	221.595
(B) Unimproved	0.871								0	.871
* TOTAL MILEAGE (Add Total of Improved & Unimproved Mileage)	222.466									222.466

WARNING: This Total Mileage also does not represent all mileage in the area of jurisdiction. It does not include, for example, city streets, private roads, Forest Service or BLM roads, or any other roads that may exist, but are not considered (by the jurisdiction) to be part of that jurisdiction's road system. There are, usually, many miles of roads in existence beyond those included in this report.

☒ 1 SET OF COMPLIMENTARY DATA AND MAPS ON A CD

☒ 1 SET OF COMPLIMENTARY ROAD SURFACE MAPS

☐ SET(S) OF LARGE ROAD SURFACE MAPS AT \$15.00 PER SHEET 42IN. x 48IN.

☐ SET(S) OF LARGE ROAD SURFACE MAPS AT \$15.00 PER SHEET 42 IN. x 60 IN.

MAPS AND DATA WILL BE SENT TO ADDRESS BELOW.

I certify that the information contained herein is correct to the best of my knowledge and belief.


SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL


OFFICIAL TITLE

DATE 11-20-02

P.O. BOX 812
OROFINO ID. 83544
ADDRESS

LOCAL ROAD MILEAGE REPORT

CLEARWATER

2003

COUNTY

HIGHWAY DISTRICT

FOR YEAR ENDED

Road Surface Type	1 Existing Mileage at beginning of the Year	2 Error revision	3 Mileage obliterated from your Jurisdiction (road no longer exists)	4 Mileage Transferred or Abandoned out of your Jurisdiction (road still exists)	5 Mileage Out of Surface Type to Another Surface Type	6 Mileage Transferred into your Jurisdiction from another Jurisdiction	7 Mileage into Surface Type from Another Surface Type	8 Mileage Added By Building New roads (Roads Previously did not exist)	9 Mileage Change Add columns 2,3,4,5,6,7, &8	10 Mileage at end of Reporting Year - add columns 1 & 9
	[+]	[+ or -]	[-]	[-]	[-]	[+]	[+]	[+]	[+ or -]	[+]
(C) Earth - graded & drained	2.592								0	2.592
(E) Gravel - graded & drained	123.014								- .416	122.598
(F) Asphalt less than 1" or dust suppressant treated gravel	3.151								+ .416	3.567
(G-1) Road or Cold Plant mix Asphalt	38.028								0	38.028
(G-2) Hot mix Asphalt pavement	54.485								0	54.485
(J) Other (e.g., concrete)	0.325								0	.325
Total of Improved road mileage (add C,E,F,G-1,G-2,&J)	221.595									221.595
(B) Unimproved	0.871									.871
* TOTAL MILEAGE (Add Total of Improved & Unimproved Mileage)	222.466									222.466

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☒ PLEASE SEND A FREE CD AND PAPER MAPS OF MY ROAD SYSTEM

☐ PLEASE SEND A FREE PAPER MAP OF MY ROAD SYSTEM

☐ DO NOT SEND MAPS OR A CD, THESE ARE NOT NEEDED AT THIS TIME

When smaller or larger maps are needed, there are private firms that can produce maps from the CD. If that does not work please contact Jim Hill for assistance. Phone # (208) 334-8227E-mail: jhill@itd.state.id.us

MAPS AND DATA WILL BE SENT TO ADDRESS BELOW.

I certify that the information contained herein is correct to the best of my knowledge and belief.

DATE 11-21-03

SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

OFFICIAL TITLE

ADDRESS

LOCAL ROAD MILEAGE REPORT

CLEARWATER

2004

COUNTY

HIGHWAY DISTRICT

FOR YEAR ENDED

	1	2	3	4	5	6	7	8	9	10
Road Surface Type	Existing Mileage at beginning of the Year	Error revision	Mileage obliterated from your Jurisdiction (road no longer exists)	Mileage Transferred or Abandoned out of your Jurisdiction (road still exists)	Mileage Out of Surface Type to Another Surface Type	Mileage Transferred into your Jurisdiction from another Jurisdiction	Mileage into Surface Type from Another Surface Type	Mileage Added By Building New roads (Roads Previously did not exist)	Mileage Change Add columns 2,3,4,5,6,7, & 8	Mileage at end of Reporting Year - add columns 1 & 9
	[+]	[+/-]	[-]	[-]	[-]	[+]	[+]	[+]	[+/-]	[+]
(C) Earth - graded & drained	2,592				43				43	2,162
(E) Gravel - graded & drained	122,598				6.26	7	43		50.69	119,468
(F) Asphalt less than 1" or dust suppressant treated gravel	3,567						6.26		6.26	9,827
(G-1) Road or Cold Plant mix Asphalt	38,028								0	38,028
(G-2) Hot mix Asphalt pavement	54,485								0	54,485
(J) Other (e.g., concrete)	0,325								0	325
Total of Improved road mileage (add C,E,F,G-1,G-2,&J)	221,595									222,295
(B) Unimproved	0,871								0	871
* TOTAL MILEAGE (Add Total of Improved & Unimproved Mileage)	222,466									223,166

WARNING: This Total Mileage also does not represent all mileage in the area of jurisdiction. It does not include, for example, city streets, private roads, Forest Service or BLM roads, or any other roads that may exist, but are not considered (by the jurisdiction) to be part of that jurisdiction's road system. There are, usually, many miles of roads in existence beyond those included in this report.

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MAPS AND DATA WILL BE SENT TO ADDRESS BELOW.

I certify that the information contained herein is correct to the best of my knowledge and belief.

[Signature]

SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

[Signature]

OFFICIAL TITLE

DATE 10-28-04

90 Box 812

PROFESSOR, ID 83544

ADDRESS

LOCAL ROAD MILEAGE REPORT

CLEARWATER

2005

COUNTY

HIGHWAY DISTRICT

FOR YEAR ENDED

	1	2	3	4	5	6	7	8	9	10
Road Surface Type	Existing Mileage at beginning of the Year	Error revision	Mileage obliterated from your Jurisdiction (road no longer exists)	Mileage Transferred or Abandoned out of your Jurisdiction (road still exists)	Mileage Out of Surface Type to Another Surface Type	Mileage Transferred into your Jurisdiction from another Jurisdiction	Mileage into Surface Type from Another Surface Type	Mileage Added By Building New roads (Roads Previously did not exist)	Mileage Change Add columns 2,3,4,5,6,7, &8	Mileage at end of Reporting Year - add columns 1 & 9
	[+]	[+ or -]	[-]	[-]	[-]	[+]	[+]	[+]	[+ or -]	[+]
(C) Earth - graded & drained	2.162									2.162
(E) Gravel - graded & drained	117.468				1.17				-1.17	116.298
(F) Asphalt less than 1" or dust suppressant treated gravel	9.827							1.17	+1.17	10.997
(G-1) Road or Cold Plant mix Asphalt	38.028								0	38.028
(G-2) Hot mix Asphalt pavement	54.485								0	54.485
(J) Other (e.g., concrete)	0.325								0	.325
Total of Improved road mileage (add C,E,F,G-1,G-2,&J)	222.295									222.295
(B) Unimproved	0.871									.871
* TOTAL MILEAGE										223.166

LOCAL ROAD MILEAGE REPORT

CLEARWATER

2006

COUNTY

HIGHWAY DISTRICT

FOR YEAR ENDED

Road Surface Type	Existing Mileage at beginning of the Year	Errors revised	Mileage withdrawn from your jurisdiction (road no longer exists)	Mileage Transferred or Abandoned out of your jurisdiction (road still exists)	Mileage Out of Surface Type to Another Surface Type	Mileage Transferred into your jurisdiction from another jurisdiction	Mileage into Surface Type from Another Surface Type	Mileage Added By Building New roads (Roads Previously did not exist)	Mileage Change	Mileage at end of Reporting Year - add columns 1 & 9
	[+]	[+/-]	[-]	[-]	[-]	[+]	[+]	[+]	[+/-]	[+]
(C) Earth - graded & drained	2.162								0	2.162
(E) Gravel - graded & drained	116.298								0	116.298
(F) Asphalt less than 1" or dust suppressant treated gravel	10.997								0	10.997
(G-1) Road or Cold Plant mix Asphalt	38.028								0	38.028
(G-2) Hot mix Asphalt pavement	54.485								0	54.485
(J) Other (e.g., concrete)	0.325								0	0.325
Total of Improved road mileage (add C,E,F,G-1,G-2,&J)	222.295								0	222.295
(B) Unimproved	0.871								0	0.871
* TOTAL MILEAGE (Add Total of Improved & Unimproved Mileage)	223.166									223.166

WARNING: This Total Mileage also does not represent all mileage in the area of jurisdiction. It does not include, for example, city streets, private roads, Forest Service or BLM roads, or any other roads that may exist, but are not considered (by the jurisdiction) to be part of that jurisdiction's road system. There are, usually, many miles of roads in existence beyond those included in this report.

I certify that the information contained herein is correct to the best of my knowledge and belief.

DATE 11-27-06

SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

OFFICIAL TITLE

PRINT NAME

ADDRESS

LOCAL ROAD MILEAGE REPORT

CLEARWATER

2007

COUNTY

HIGHWAY DISTRICT

FOR YEAR ENDED

	1	2	3	4	5	6	7	8	9	10
Road Surface Type	Existing Mileage at beginning of the Year	Error revision	Mileage obliterated from your Jurisdiction (road no longer exists)	Mileage Transferred or Abandoned out of your Jurisdiction (road still exists)	Mileage Out of Surface Type to Another Surface Type	Mileage Transferred into your Jurisdiction from another Jurisdiction	Mileage into Surface Type from Another Surface Type	Mileage Added By Building New roads (Roads Previously did not exist)	Mileage Change Add columns 2,3,4,5,6,7, &8	Mileage at end of Reporting Year - add columns 1 & 9
	[+]	[+ or -]	[-]	[-]	[-]	[+]	[+]	[+]	[+ or -]	[+]
(C) Earth - graded & drained	2.162								0	2.162
(E) Gravel - graded & drained	116.298								.19	116.108
(F) Asphalt less than 1" or dust suppressant treated gravel	10.997								.19	11.187
(G-1) Road or Cold Plant mix Asphalt	38.028								0	38.028
(G-2) Hot mix Asphalt pavement	54.485								0	54.485
(J) Other (e.g., concrete)	0.325								0	.325
Total of Improved road mileage (add C,E,F,G-1,G-2,&J)	222.295									222.295
(B) Unimproved	0.871									.871
* TOTAL MILEAGE (Add Total of Improved & Unimproved Mileage)	223.166									223.166

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I certify that the information contained herein is correct to the best of my knowledge and belief.

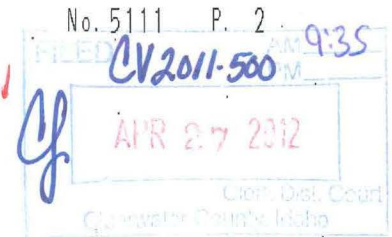
DATE 11-27-07

SIGNATURE OF COUNTY OR HIGHWAY DISTRICT OFFICIAL

OFFICIAL TITLE

PRINT NAME

ADDRESS



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of
Variance ZV2011-2

EDWARD L. SHINN and DONILEE E.
SHINN, husband and wife,

Petitioners,

vs.

BOARD OF COUNTY COMMISSIONERS
OF CLEARWATER COUNTY, IDAHO,

Respondents.

CASE NO. CV 2011-500

ORDER FOR BRIEFING

Whereas the Petitioners have filed this action for judicial review, it is therefore Ordered, pursuant to Idaho Code § 67-5275, that the respondents transmit to this court the original or a certified copy of the record of proceedings which are the subject matter of the petitioner's request for judicial review. Said record shall be delivered to the clerk of court no later than June 15, 2012. The record shall comply with Idaho Code § 67-5275(1).


After the record is delivered to the clerk the petitioner shall have 30 days to file any briefs or memorandums in support of their petition. The respondents shall have 21 days after receiving the petitioner's briefs/memorandums in which to file

ORDER FOR BRIEFING-1

their responsive briefs or memorandums. The petitioners shall then have 10 days to file any reply briefs or memorandums.

After receiving the parties' briefs and memorandums the court will schedule a hearing on the petition for judicial review.

So Ordered this 27 day of April, 2012.



Michael J. Griffin
District Judge

CERTIFICATE OF MAILING/DELIVERY

I hereby certify that a true copy of the foregoing ORDER FOR BRIEFING was mailed, faxed or hand delivered by the undersigned at Orofino, Idaho this 27th day of April, 2012, to:

Garry W. Jones
Jones, Brower & Callery
P.O. Box 854
Lewiston, Idaho 83501

E. Clayne Tyler
Courthouse Mail
Orofino, Idaho 83544

Carrie Bird
Clerk of the District Court

By: Christy L. Hering
Deputy Clerk



ORDER FOR BRIEFING-3

E. CLAYNE TYLER, ISBN 5277
Clearwater County Prosecuting Attorney
P.O. Box 2627
Orofino, ID 83544
Telephone: 208-476-5611
Fax: 208-476-4642




Deputy: LORI GILMORE, ISBN 5877

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)	CASE NO: CV2011-500
ZV2011-2)	
)	NOTICE OF FILING OF RECORD
EDWARD L. SHINN and)	OF PROCEEDINGS
DONILEE E. SHINN, husband and wife,)	
)	
Petitioners,)	
)	
BOARD OF COUNTY COMMISSIONERS))	
OF CLEARWATER COUNTY, IDAHO,)	
)	
Respondent.)	
_____)	

This notice is to provide a record that the Respondent, Clearwater County, Idaho, filed the record of proceedings in accordance with Idaho Code Section 67-5275 on February 17, 2012, as reflected in the Court file.

DATED: April 30, 2012

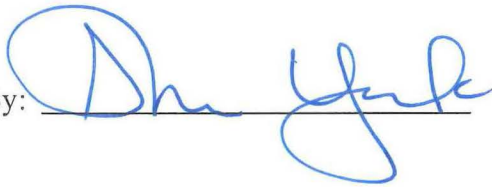


E. CLAYNE TYLER
PROSECUTING ATTORNEY

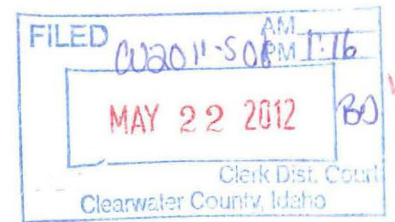
CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed to the following on this 30th day of April, 2012:

Garry W. Jones
Jones, Brower & Callery, PLLC
P.O. Box 854
Lewiston, ID 83501

By: 

Garry W. Jones (ISB No. 1254)
Karin Seubert (ISB No. 7813)
JONES, BROWER & CALLERY, P.L.L.C.
1304 Idaho Street
P. O. Box 854
Lewiston, Idaho 83501
(208) 743-3591



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)
ZV2011-2)
)
EDWARD L. SHINN and)
DONILEE E. SHINN, husband and wife,)
)
Petitioners,)
)
BOARD OF COUNTY COMMISSIONERS))
OF CLEARWATER COUNTY, IDAHO,)
)
Respondent.)
_____)

CASE NO. CV 2011-00500

MEMORANDUM OF LAW IN
SUPPORT OF PETITION FOR
JUDICIAL REVIEW

COMES NOW EDWARD L. SHINN and DONILEE SHINN, husband and wife,
petitioners, by and through GARRY W. JONES, their attorney of record, and, in compliance
with this Court's Order for Briefing dated April 27, 2012, submits this Memorandum of Law in
support of their Petition for Judicial Review filed on December 19, 2011.

PROCEDURAL AND FACTUAL BACKGROUND

On May 23, 2006, Ed and Carole Galloway filed an application with the Clearwater County Planning and Zoning Commission requesting approval to subdivide a parcel of property of approximately 99.82 acres into 10 parcels ranging between 6 plus acres and 12 plus acres in size. *Tr.*, Tab 16 at 1. Said subdivision is proposed to be served by an access road from Middle Road to the subdivision that crosses real property owned by Petitioners Edward L. Shinn and Donilee Shinn and Don Ingle. *Tr.*, Tab 20 at 49. During the course of the subdivision review process, it was determined that the proposed subdivision could not conform with the requirements of the Clearwater County Subdivision Ordinance without Mr. and Mrs. Galloway first securing the subject variances from the access road minimum requirements. *Id.* at 9-18.

On January 11, 2011, Mr. and Mrs. Galloway filed an application for three variances from the Clearwater County Subdivision Ordinance. *Tr.*, Tab 4; Tab 16 at 1. Said application was (1) to vary the requirement that access roads be built within a minimum 60 foot right of way to allow instead for a 30 foot right of way, (2) to vary the requirement that access roads have a minimum twenty four foot road surface or finished width to allow instead for a 18 foot width with a 15 foot “bottleneck” at one point, and (3) to vary the requirement that all arterial, collector, and other streets in a proposed subdivision be dedicated to the public to allow instead for a private road. *Id.*

The Clearwater County Planning and Zoning Commission held a public hearing on said application on March 21, 2011. *Tr.*, Tab 16 at 1; Tab 20. At said public hearing, Mr. Galloway testified in support of his application. *Tr.*, Tab 20 at 9-35, 73-83. Attorney Garry Jones testified on behalf of Mr. and Mrs. Shinn in opposition to the application, *Tr.*, Tab 20 at 35-49, 94-95. Neighbors Don Ingle (owing land directly adjacent to the subject property), Roger Kinyon

(owning land in the general vicinity), and Chris Martin (owning land in the general vicinity) also spoke in opposition to the application. *Id.* at 49-58. The Idaho Department of Lands submitted written comment in advance of the hearing indicating their neutral position on the application. *Id.* at 59. Surveyor Terry Golding provided neutral testimony concerning the history of the roads in the area. *Id.* at 59-72. Real estate agent Jerry Strahan provided neutral testimony as to his opinion interpretation of the easement. *Id.* at 72-73. At the conclusion of said hearing, the Planning and Zoning Commission granted each of the requested variances. *Tr.*, Tab 15 (Findings of Fact and Written Decision dated April 4, 2011); Tab 20 at 108-09.

On March 25, 2011, Mr. and Mrs. Shinn, through counsel, filed an Application for Appeal seeking review of the Planning and Zoning Commission's approval of the subject variances. *Tr.*, Tab 1. The Notice of Appeal was heard by the Clearwater County Board of County Commissioners on May 23, 2011. *Tr.*, Tab 3. At the conclusion of said hearing, the Clearwater County Board of County Commissioners overturned the variance approval and remanded the Galloway request to the Planning and Zoning Commission for further public hearing on the issue of whether an undue hardship exists to support the granting of the variances as requested. *Tr.*, Tab 16 (Decision dated July 29, 2011).

On August 15, 2011, the Clearwater County Planning and Zoning Commission held further public hearing on the subject variances. *Tr.*, Tab 21. At said second public hearing, a letter from Mr. Galloway to county staff was read into the record in support of his application. *Id.* at 10-13. Mr. Galloway again personally testified in support of his application. *Id.* at 16-20, 43-49, 63. Attorney Garry Jones on behalf of Mr. and Mrs. Shinn, and neighbors Mr. Ingle and Mr. Kinyon again testified in opposition to the application. *Id.* at 21-41, 49-50. The Idaho Department of Lands again submitted written comment in advance of the hearing indicating their

neutral position on the application. *Id.* at 42-43. At the conclusion of this second public hearing, the Planning and Zoning Commission again granted each of the requested variances. *Tr.*, Tab 15 (Findings of Fact and Written Decision dated September 6, 2011); Tab 21 at 66.

On August 31, 2011, Mr. and Mrs. Shinn, through counsel, filed a second Application for Appeal seeking review of the Planning and Zoning Commission' approval of the subject variances. *Tr.*, Tab 1. The second Notice of Appeal was heard by the Clearwater County Board of County Commissioners on October 24, 2011, at which time the Board heard oral argument and took the matter under advisement until a decision was announced at its November 7, 2011 meeting upholding the subject variances' approval. *Tr.*, Tab 16 (Decision dated November 21, 2011); Tab 22.

On December 19, 2011, Mr. and Mrs. Shinn, through counsel, filed their Petition for Judicial Review, which initiated this proceeding.

LAW

I. Standard of Review

The judicial review of an agency decision is governed by Idaho Code Section 67-5279, which requires that the reviewing court shall affirm the agency action unless the court finds that the action was:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure; or
- (d) Arbitrary, capricious, or an abuse of discretion.

In addition to demonstrating that the agency erred in a manner specified by Idaho Code Section 67-5279(3), the party challenging the decision of the Board must demonstrate that its substantial rights have been prejudiced. *Hawkins v. Bonneville Co. Bd. of Comm'rs*, 151 Idaho 228, 254

P.3d 1224 (2011) (citing *Kirk-Hughes Dev., LLC v. Kootenai Co. Bd of Co. Comm'rs*, 149 Idaho 555, 237 P.3d 652 (2010)).

II. The Board of County Commissioners' denial of Petitioners' appeal of the subject variances prejudiced their substantial rights.

The party challenging an agency decision must demonstrate that its substantial rights have been prejudiced in addition to demonstrating error pursuant to Idaho Code Section 67-5279. *Hawkins v. Bonneville Co. Bd. of Comm'rs*, 151 Idaho 228, 254 P.3d 1224 (2011) (citing *Kirk-Hughes Dev., LLC v. Kootenai Co. Bd of Co. Comm'rs*, 149 Idaho 555, 237 P.3d 652 (2010)).

Petitioners will address the prejudice to Mr. and Mrs. Shinn's substantial rights first as it is not in dispute and can be addressed concisely.

Here, the Board of County Commissioners appropriately concluded that the Shinns have a substantial right implicated by the approval or denial of the subject variance by virtue of their ownership of the land encumbered by the easement proposed to serve as an access road. *Tr.*, Tab 16 at 6. Because the approval of the variances was not supported by applicable law, as discussed below, said wrongful approval prejudices Mr. and Mrs. Shinn's substantial right as land owners. See *Hawkins*, 151 Idaho at 233, 254 P.3d at 1229 (citing *Terrazas v. Blaine Co. ex rel. Bd. Of Comm'rs*, 147 Idaho 193, 207 P.3d 169 (2009)).

III. The Board of County Commissioners' denial of Petitioners' appeal in error requires reversal pursuant to Idaho Code Section 67-5279(3).

The judicial review of an agency decision requires that the reviewing court shall affirm the agency action unless the court finds that the action was:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the statutory authority of the agency;
- c. Made upon unlawful procedure; or
- d. Arbitrary, capricious, or an abuse of discretion.

Idaho Code §67-5279(3).

As discussed below, the Board of County Commissioners' denial of Petitioners' appeal of the subject variances violated both state and local statutory provisions warranting reversal pursuant to Idaho Code Section 67-5279(3)(a), exceeded its statutory authority warranting reversal pursuant to Idaho Code Section 67-5279(3)(b), and was arbitrary, capricious and an abuse of its discretion warranting reversal pursuant to Idaho Code Section 67-5279(3)(d). This Memorandum will address each in turn.

- a. The Board of County Commissioners' denial of Petitioners' appeal justifies reversal pursuant to Idaho Code Section 67-5279(3)(a) due to violations of applicable statutory provisions.

The Idaho Constitution grants counties some self-governing powers and states in relevant part as follows:

[A]ny county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations are not in conflict with its charter or with the general laws.

Idaho Const., Art. XII, § 2 (emphasis added). The power of counties and municipalities to zone is a police power authorized by this constitutional section. *Gumprecht v. City of Coeur d'Alene*, 104 Idaho 615, 661 P.2d 1214 (1983).

The application of this constitutional provision requires that a local zoning ordinance cannot conflict the general laws of the State of Idaho, including the Idaho Code. Instead, the granting of a variance must comply both with the local zoning ordinance and all relevant statutory provisions under the Idaho Code.

Here, the record reflects that the Board of County Commissioners' denial of Mr. and Mrs. Shinn's appeal violated Idaho Code Section 67-6516, which governs variance permits, and also violated the requirements of the Clearwater County Subdivision Ordinance. This Memorandum

will, first, discuss the Idaho Code violation and then the Clearwater County Subdivision Ordinance violation.

- (1) Insufficient evidence was presented to support a finding of “an undue hardship because of characteristics of the site” as required under Idaho Code Section 67-6516.

The clear language of Idaho Code Section 67-6516 requires that a variance “may be granted to an applicant only upon a showing of *undue hardship because of the characteristics of the site* and that the variance is not in conflict with the public interest.” (emphasis added.)

Here, the record reflects that insufficient evidence was presented or findings made that there are special circumstances or conditions affecting “the characteristics of the site.” See *Tr.*, Tabs 20 and 21. Instead, as discussed below, all evidence presented, findings of fact made, and conclusions drawn as to the existence of an undue hardship demonstrate that, at best, there are special circumstances or conditions affecting applicants Mr. and Mrs. Galloway, namely the scope of their rights under the subject easement, not the site itself.

The Board of County Commissioners’ analysis and the underlying arguments made by Mr. Galloway can be appropriately summarized as follows:

1. The existing land use regulations are outdated and the Applicant should not be held to the standards contained therein because the requested variance is adequate.
2. Building a wider road is more expensive.
3. An undue hardship exists because the Applicant is constrained by the scope of the easement that he owns.

Tr., Tab 21 at 10-13; Tab 16 (Decision dated November 21, 2011 at 3-5).

None of these points demonstrate “an undue hardship because of the characteristics of the site” as required under Idaho Code Section 67-6516.

First, as discussed further below, the Planning and Zoning Commission and Board of County Commissioners are constrained to follow the law in its current form when considering

variance requests. *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984). Whether the Clearwater County Subdivision Ordinance is outdated and in need of amendment is a public policy question to be resolved through the appropriate legislative process. It is not grounds for an undue hardship. See *infra*.

Further, whether or not a requested variance is “adequate” does not support a finding of “undue hardship because of characteristics of the site.” Adequacy is certainly an appropriate factor to consider when evaluating whether “the variance is not in conflict with the public interest,” which is also required under Idaho Code Section 67-6516. However, adequacy is not the appropriate standard in evaluating the existence of an “undue hardship.” Just because something lesser than is otherwise required is “adequate” does not mean that an “undue hardship because of characteristics of the site” exists.

Despite this lack of correlation, the Board of County Commissions cited to the “adequacy” of the access road as varied to conclude that sufficient evidence was presented to justify the Commission’s findings, and stated as follows:

In this case, evidence to the Commission found the road as varied provided proper, safe access, that the easement necessary to support the road as varied was adequate ... and unnecessary in that there would likely be no further developments or subdivisions using the same road for access... The road as varied (easement, road width, public dedication) was deemed adequate by reviewing professionals including the Clearwater County Road Department and the Evergreen Fire District.

...

In prior proceedings, testimony was submitted from the Clearwater County Road and Bridge Department Supervisor, Rob Simon, indicating that the proposed private road access (the subject of the three variance requests) would be adequate for safe, year round travel, especially given the low density rural nature of the development. That information was provided again in the remand hearing of August 15th.

Tr., Tab 16 at 4-5 (citations omitted, emphasis added). Just because the access road as varied may be adequate, said adequacy fails to support the conclusion that “undue hardship because of

the characteristics of the site,” Idaho Code §67-6516, nor did the Clearwater County Planning and Zoning Commission make such a factual finding. *Tr.*, Tab 15 (Findings of Fact and Written Decision dated September 6, 2011).

Second, the Board of Commissioners misinterpreted Idaho law when stating “[a]n undue hardship can be created due to exorbitant expense of a requirement not justified by the development, such as with respect to excessive road construction requirements to support a relatively few number of daily vehicle trips caused by the development for a Board of County Commissioners finding of undue hardship due to an expense vs. benefit analysis. *Id.* at 4 (citing *Blaha v. Board of Ada County Comm’rs*, 134 Idaho 770, 773, 9 P.3d 1236, 1239 (2000)).

The *Blaha* Court did not discuss the validity of an expense versus benefit analysis in consideration of a variance as the Board of County Commissioners’ Decision contends. *Id.* Instead, the Court in *Blaha* concluded that the Ada County Board of County Commissioners’ decision was in error because the Petitioners had waived any objections by failing to appeal the underlying decision of the relevant highway district. 134 Idaho at 775, 9 P.3d at 1241. There is no such procedural error alleged here and the Board of County Commissioners’ reliance on the *Blaha* decision is misplaced.

Instead, the principles established in *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984), govern the application of economic feasibility in variance requests. In *City of Burley*, the Court found that the economic feasibility of converting a rental property to three rather than two units was not “peculiar to the circumstances of the site” and was instead of general applicability. 107 Idaho at 909-10, 693 P.2d at 1111-12.¹ Likewise, here, the

¹ In *City of Burley*, the Idaho Court of Appeals ruled as follows: “The variance was granted because increasing the density of the land use, from a duplex to a triplex, would make the remodeling economically feasible. However, the same could be said of any investment in rental property. When the density of land use is increased, the potential income flow also increases. An otherwise unprofitable investment, such as remodeling, may become feasible. This

improved economic feasibility of constructing the requested 18 foot road as opposed to a 30 foot road as the Subdivision Ordinance requires is of general applicability caused by economic feasibility, not due to the “characteristics of the site,” as required under Idaho Code Section 67-6516. It fails to support a finding of “undue hardship due to characteristics of the site.”

Last, when the findings that the requested variances are “adequate” and compliance would be “too expensive” are disregarded for the reasons discussed above, then the remaining records reflects what this dispute boils down to entirely: that Mr. and Mrs. Galloway’s “impossibility” was of their own making through the easement that they themselves secured. This also fails to support a finding of “undue influence due to characteristics of the site.”

There is no dispute that Mr. and Mrs. Galloway purchased the property in 1985. *Tr.*, Tab 21 at 63. Nor is there any dispute that the Applicant himself secured the easement in 1998. *Tr.*, Tab 13 (Grant of Easement dated September 21, 1998). Nor is it disputed that the applicable Subdivision Ordinance has remained unchanged since the purchase of the property. *Tr.*, Tab 21 at 62-64.

The Idaho Supreme Court was faced with similar facts in *Dawson Enterprises, Inc. v. Blaine County*, 98 Idaho 506, 567 P.2d 1257 (1977), which involved the review of a denial to re-zone a parcel of land near Sun Valley from residential/agricultural to commercial. There, the Court stated:

[W]e cannot overlook the fact that Dawson’s hardship in this case is self-inflicted since the option to purchase was exercised in full knowledge that the land was zoned residential and that a variance for commercial use had not been granted. As the Supreme Court of Colorado said, under similar circumstances:

Nopro’s land investment was made in full knowledge of the zoning limitations. It took the calculated risk that it could break the zoning use barrier and thereby double the profit from its investment. Having been denied the means by which

correlation between density of land use and the scope of feasible investments is not “peculiar” to the property at issue in this case. It could apply to rental properties anywhere.”

this might be accomplished, it claims hardship. If hardship exists under the facts of this case and we hold that it does not it was incurred voluntarily by the choice of Nopro and was self-inflicted.

Id. at 516, 567 P.2d 1267 (quoting *Nopro Co. v. Town of Cherry Hills Village*, 180 Colo. 217, 504 P.ed 344, 349 (1973)) (emphasis added).

Here, as in *Dawson* and *Nopro*, no hardship exists. But, if the Court finds that sufficient evidence exists to support the Commission's finding of undue hardship, said hardship was incurred voluntarily by the choice of Mr. and Mrs. Galloway when they secured the subject easement. *Tr.*, Tab 13 (Grant of Easement dated September 21, 1998).

But, most importantly, any such hardship that may be found has no relationship to the "characteristics of the site" as required under Idaho Code Section 67-6516. The record reflects that the characteristics of "the site" – that being either the proposed access road to Mr. and Mrs. Galloway's proposed subdivision or the site of the proposed subdivision itself – did not define the terms of the grant of easement based on "extraordinary topography" or other such physical landmark or condition that could be interpreted to create an "undue hardship *because of characteristics of the site.*" *Tr.*, Tabs 20 and 21. Instead, the undisputed evidence was that the site is "gently rolling and very capable of putting a road at virtually any place. It's very, I mean, it's pretty darn level ground." *Tr.*, Tab 21 at 31. See also *Tr.*, Tab 14 (Exhibits 1-9).

For these reasons, there was insufficient evidence presented to support a finding of "undue hardship because of characteristics of the site" as required under Idaho Code Section 67-6516. The Board of County Commissioner's denial of Petitioner's appeal absent such a finding violates Idaho Code 67-6516 and must be reversed pursuant to Idaho Code Section 67-5279(3)(a).

- (2) Insufficient evidence was presented, and no relevant findings of fact made, as to whether the requested variances would be “injurious to other property in the area in which the property is situated” as required under Article VIII, Section B(iii) of the Clearwater County Subdivision Ordinance.

In addition to failing to correctly apply Idaho Code Section 67-6516, as discussed above, the Board of County Commissioners failed to correctly apply the Clearwater County Subdivision Ordinance, which establishes that:

No variance, as herein defined, shall be favorably acted by upon by the Commission unless there is a finding, as a result of public hearing that ALL of the following exist:

- a. That there are such special circumstances or conditions affecting the property that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable and cause an undue hardship.
- b. That strict compliance with the requirements of the Ordinance would result in extraordinary topography, or such other conditions would result in inhibiting the achievement of the objectives of the Ordinance.
- c. That the granting of the specified variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated.
- d. That such variance will not violate the provisions of the Idaho Code.

Clearwater County Subdivision Ordinance (hereinafter “CCSO”, Art. VIII(B).

The Planning and Zoning Commission failed to include findings that the granting of the subject variances will not be “injurious to other property in the area in which the property is situated” in either of the two Findings of Fact and Written Decisions regarding the subject variances. *C.C.S.O.*, Art. VIII(B)(c); *Tr.*, Tab 15 (Findings of Fact and Written Decisions dated April 4, 2011 and Sept. 6, 2011). Despite this shortcoming, the Planning and Zoning Commission concluded that variance requirements had been met and approved the variance request. *Tr.*, Tab 15 (Findings of Fact and Written Decision dated Sept. 6, 2011 at 7). The Clearwater County Board of County Commissioners similarly concluded that “sufficient evidence was presented to justify the Commission’s findings” but its Decision contained no

discussion of its analysis of or conclusions regarding whether the subject variances will be “injurious to other property in the area in which the property is situated” as required under the Ordinance. *C.C.S.O.*, Art. VIII(B)(c); *Tr.*, Tab 16

Further, a review of the record in its entirety finds that the only relevant comments contained in said Findings of Fact and Written Decisions that could arguably be construed as findings that the subject variances will not be “injurious to other property in the area in which the property is situated” was not properly before the Planning and Zoning Commission. Such comments are limited to language quoted from an email sent by Mr. Galloway’s email to Planning Administrator Bobbi Kaufman on January 20, 2012, which stated as follows:

The public welfare is not impacted at all since the changes will not have an impact on emergency vehicles. Nor will it impact other owners in the area as the design and implementation is entirely within parameters of the deeded R/W. and the original (approved) plat. Carole and I are doing this low density sub with applicable CC&Rs to limit impact on the neighbors both visually and physically.

...

These variances are in sync with precedent ordinances (sic) over the last 30-40 years in Clearwater County.

Tr., Tab 15 (Findings of Fact and Written Decision dated April 4, 2011 at 2-3, ¶4(a) and 4(e)) (emphasis added).

Said email could not be the basis of any of the Commission’s findings because said email was not read into the record at either public hearing on the subject variances nor addressed in any of the testimony presented.² *Tr.*, Tabs 20 and 21. Instead, said email was contained in two staff reports, which were presumably provided to the members of the Planning and Zoning Commission prior to the March 21, 2011 hearing. *Tr.*, Tab 10 (Staff Report dated Feb. 4, 2011 at 3, ¶4(c), and Staff Report dated March 14, 2011 at 3, ¶4(c)). Said staff reports were not

² In contrast, Mr. Galloway’s email to the Clearwater County planning administrator of August 10, 2011 was read into the record at the August 15, 2011 public hearing, so is properly included in the record of said public hearing.

presented or accepted as evidence at either of the public hearings on the subject variances. *Tr.*, Tabs 20 and 21. Since said email and the relevant staff reports were not part of the record before the Planning and Zoning Commission, it cannot form the basis of any factual findings or decision of the Commission.

For these reasons, the Board of County Commissioners' denial of Petitioners' appeal in the absence of any factual basis to support the required finding that the variances will not be "injurious to other property in the area in which the property is situated" constitutes a violation of the Clearwater County Subdivision Ordinance. As such, reversal is warranted pursuant to Idaho Code Section 67-5279(3)(a).

- b. The Board of County Commissioners' denial of Petitioners' appeal justifies reversal pursuant to Idaho Code Section 67-5279(3)(b) because it exceeded its statutory authority.

The Board of County Commissioners' denial of Petitioners' appeal exceeded its statutory authority because, first, it acted in a legislative capacity as opposed to a quasi-judicial capacity by failing to properly apply relevant law, and, second, it impermissibly attempted to adjudicate the rights of the respective parties with regard to the easement. This Memorandum of Law will address each in turn.

- (1) The Board of County Commissioners acted in excess of its authority by implicitly attempting to legislate while sitting in a quasi-judicial capacity.

The Idaho Supreme Court addressed the scope of authority granted to administrative entities in considering variance requests in *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984), which is particularly instructive in this case.³ The *City of Burley* case involved a variance request to allow the conversion of a rental property into a triplex

³ In *City of Burley*, the municipal ordinance adopted the language of "special circumstances" and "peculiar" as prerequisites for variance approval, whereas the Clearwater County Subdivision Ordinance includes the similar terms of "special circumstances or conditions affecting the property," "extraordinary topography, or such other conditions".

as opposed to a duplex as allowed by right because said variance was necessary to justify the expense of remodeling. *Id.* The Court rejected the variance approval as follows:

A variance request, like a rezoning request, focuses upon a specific parcel of property. It invokes a quasi-judicial power. Moreover, a variance request contemplates no modification of the zoning ordinance. It is governed strictly by existing ordinance requirements. Therefore, in reviewing a variance decision, our function is to determine whether the zoning board's findings are supported by substantial evidence and, if so, whether the board's conclusions properly apply the zoning ordinance to the facts as found.

The district court held that the zoning board's findings – as far as they went – were supported by substantial evidence. We agree. Gregerson's testimony, which was largely undisputed tended to show that converting the rental structure into a triplex was necessary to justify the expense of remodeling. However, the court also upheld the board's conclusion of law, that the requirements for a variance had been met. On this point we believe the court erred. As noted above, the ordinance explicitly requires that "any special circumstances ... or conditions" creating the need for a variance must be "peculiar" to the property and not applicable "generally to land or buildings in the neighborhood." The board found no facts satisfying this requirement.

The variance was granted because increasing the density of the land use, from a duplex to a triplex, would make the remodeling economically feasible. However, the same could be said of any investment in rental property. When the density of land use is increased, the potential income flow also increases. An otherwise unprofitable investment, such as remodeling, may become feasible. This correlation between density of land use and the scope of feasible investments is not "peculiar" to the property at issue in this case. It could apply to rental properties anywhere.

This case illustrates a tension in public policy between the goal of upgrading a community's physical housing stock and the goal of maintaining stability in the nature and density of land uses in residential neighborhoods. Balancing these goals is a legislative task. The Idaho Legislature and the Burley City Council have struck a balance by allowing variances from zoning regulations but limiting those variances to peculiar circumstances of each site. The legislative line having been drawn, the courts and administrative entities exercising quasi-judicial powers are constrained to follow it.

Id. at 909-10; 693 P.2d at 1111-12.

Here, as in *City of Burley*, the legislative line has been drawn: all variance requests in Clearwater County involving subdivisions must comply with the requirements of Idaho Code Section 67-6516 and the Clearwater County Subdivision Ordinance. See *supra*.

The record reflects that Mr. Galloway testified at length at the public hearing with regards to his opinion that the requirements of the Clearwater County Subdivision Ordinance themselves constitute an undue hardship. See *infra*. Said testimony specifically included Mr. Galloway's opinions about the outdated nature of the existing Clearwater County Subdivision Ordinance and how its application is more appropriate for an urban setting than the low density rural setting at issue. See *Tr.*, Tab 21 at 10-13. The Planning and Zoning Commission subsequently found that "[t]he requirements of the ordinance are intended for developments which tend to be a higher density checkerboard effect, using and expanding existing streets." *Tr.*, Tab 15 (Findings of Fact and Written Decision dated September 6, 2011 at 5, ¶6(c)).

The Board of Commissioners, in turn, relied upon the lack of controlling ordinances over the subdivision of the subject property into 5 20-acre parcels as allowed by right if the subject variances were denied as opposed to the 10 smaller parcels sought through the subject variances. See *Tr.*, Tab 16 at 4.⁴

If the Board of Commissioners concludes that it is in the public interest to control the development of 20-acre or larger parcels of land, then it can enact such legislation or amend existing ordinances to address the public health, safety and welfare as it deems appropriate. To do so performs its legislative function. However, when sitting in the quasi-judicial role of

⁴ The Decision of the Clearwater County Board of Commissioners stated as follows: "Failure to grant the requested variances would have the result in the inability to subdivide the real property into less than 20 acre parcels, without any control or jurisdiction over the road at all by Clearwater County, and with the possibility of more residences being in place and a higher traffic load than as currently proposed, due to the lack of controlling ordinances being in place for 20 acre or larger parcels. Thus, the public interest may actually be hurt by failure to grant the variances." *Tr.*, Tab 16 at 4-5.

review of the Planning and Zoning Commission as it did here, its legislative function is not an available resource. To blend the two as the Board of Commissioners has done here impermissibly exceeds its authority and constitutes reversible error pursuant to Idaho Code Section 67-5279(3)(b).

- (2) The Board of County Commissioners exceeded its statutory authority by attempting to adjudicate the rights of the respective parties with regards to the easement.

Additionally, although it took great pains to make clear that it did not wish to do so, the Board's Decision has the practical effect of adjudicating the rights of the respective parties with regard to the easement, which exceeds its authority. See *Tr.*, Tab 16 (Decision at 7).⁵ It is well settled under Idaho law that a local zoning authority lacks jurisdiction to determine an easement's nature and scope as questions of property ownership must be resolved by a district court. *Jasso v. Camas County*, 151 Idaho 790, 264 P.3d 897 (2011) (citing *Rural Kootenai Org., Inc. v. Bd. of Comm'rs*, 133 Idaho 833, 993 P.2d 596 (1999)).

Because a local zoning authority lacks authority to determine an easement's nature and scope, the Planning and Zoning Commission impermissibly granted the subject variance allowing for a non-public road because it is impossible to separate the public or non-public nature of the access road from the nature and scope of the easement. Said determination cannot be made without resolving inherent questions of property ownership. Through its approval of the relevant variance, the Planning and Zoning Commission impermissibly answered this question for the parties in favor of Mr. and Mrs. Galloway, which exceeds its jurisdiction. The

⁵ Stating "The easement in question provides a bare, unequivocal grant of non-exclusive easements to Galloway, and Galloway's heirs, successors and assigns, with the only limitation being as follows: 'This Grant of Easements is binding upon and enures to the benefit of the heirs, assigns, and successors of the parties hereto, and the easement for ingress and egress shall not be deemed a public right-of-way.' ... With the grant of a variance to Galloway allowing the access road to remain a private, rather than a public road, then the easement appears on its face for planning and zoning purposes, to allow for development."

Board of County Commissioners' denial of Mr. and Mrs. Shinn's appeal ratified the Commission's improper act, which in doing so exceeded the Board's authority. Said act constitutes reversible error pursuant to Idaho Code Section 67-5279(3)(b).

While Petitioners acknowledge that this judicial review proceeding is not the proper venue to adjudicate such questions of property ownership, it is important to note that even if the Board's inquiry into the scope of the easement had been authorized, its conclusions were incorrect.

The subject easement is a "non-exclusive" easement. See *Grant of Easement* dated Sept. 21, 1998, at Tab 13 (granting the Applicants "a perpetual non-exclusive easement"). Under Idaho law, a "non-exclusive" easement creates a general grant of easement, the use of which "may be enlarged beyond the purposes originally required at the time the easement was created, so long as that use is reasonable and necessary and is consistent with the normal development of the land." *McFadden v. Sein*, 139 Idaho 921, 88 P.3d 740 (2004) (emphasis added).

Here, there is no dispute that the subject property and surrounding area is "very low density rural" and that the subject variances will enlarge the easement's use. *Tr.*, Tab 21 at 14. The record reflects that no testimony was presented as to why the proposed subdivision into ten rather than five parcels (as allowed by right) is reasonable and necessary and consistent with the normal development of the land, other than Mr. Galloway's assertions that the Freeman Creek area was under development and would continue to be. *Id.* at 19. Said bald assertions are insufficient to support a finding that the increased development allowed under the subject variances is permissible under the terms of the subject easement. *McFadden*, 139 Idaho at 921, 88 P.3d at 740. However, as discussed above, said determination would be within the

jurisdiction of the District Court in a separate action to determine the relevant questions of property ownership, not the local planning authorities as part of a variance request.

- c. The Board of County Commissioners' denial of Petitioners' appeal justifies reversal pursuant to Idaho Code Section 67-5279(3)(d) because it was arbitrary, capricious and an abuse of its discretion.

Last, the Board of County Commissioners' denial of Petitioners' appeal and characterization of Mr. and Mrs. Galloway's ability to comply with the ordinance as "impossible" is an arbitrary and capricious gloss over the undisputed facts of this dispute: that this "impossibility" was of Mr. and Mrs. Galloway's own making through the easement that they themselves secured. See *Tr.*, Tab 13 (Grant of Easement dated September 21, 1998).

The undisputed record reflects that Mr. and Mrs. Galloway purchased the property in 1985. *Tr.*, Tab 21 at 63. It further reflects that Mr. and Mrs. Galloway themselves secured the easement in 1998. See *Tr.*, Tab 13 (Grant of Easement dated September 21, 1998). It further reflects that Clearwater County Subdivision Ordinance has remained unchanged, in relevant part, at all times since the purchase of the property in 1985. *Tr.*, Tab 21 at 62-64.

The Idaho Supreme Court was faced with similar facts in *Dawson Enterprises, Inc. v. Blaine County*, 98 Idaho 506, 567 P.2d 1257 (1977), which involved the review of a denial to rezone a parcel of land near Sun Valley from residential/agricultural to commercial. There, the Court stated:

[W]e cannot overlook the fact that Dawson's hardship in this case is self-inflicted since the option to purchase was exercised in full knowledge that the land was zoned residential and that a variance for commercial use had not been granted. As the Supreme Court of Colorado said, under similar circumstances:

Nopro's land investment was made in full knowledge of the zoning limitations. It took the calculated risk that it could break the zoning use barrier and thereby double the profit from its investment. Having been denied the means by which this might be accomplished, it claims hardship. If hardship exists under the facts of this case and we hold that it does not it was incurred voluntarily by the choice of Nopro and was self-inflicted.

Id. at 516, 567 P.2d 1267 (quoting *Nopro Co. v. Town of Cherry Hills Village*, 180 Colo. 217, 504 P.2d 344, 349 (1973)) (emphasis added).

Here, the Board of Commissions correctly recognized that a “self inflicted hardship, if it exists, is a factor to be considered in whether or not to grant or deny a variance, but it is not controlling.” *Tr.*, Tab 16 (Decision dated November 21, 2011 at 6). However, the Board abused its discretion and acted arbitrarily and capriciously where it stated “this Board of Commissioners cannot say that the Planning and Zoning Commission abused its discretion when deciding to grant the variances in spite of the argument of self inflicted hardship and finds in favor of Galloway on this issue.” *Id.*

The Board of Commissioners came to this conclusion despite the Planning and Zoning Commission’s failure to acknowledge and include the self-inflicted nature of the Applicant’s alleged hardship in its findings of fact or written decision. *Tr.*, Tab 15 (Findings of Fact and Written Decision dated September 6, 2011). Said failure deprived the Board of Commissioners’ – and this Court’s – ability to review the Planning and Zoning’s Commissions decision-making process for an abuse of discretion.

Where findings of fact under review are clearly inadequate, the reviewing court or quasi-judicial body should at least initially remand the case to the agency. See *Workman Family Partnership v. City of Twin Falls*, 104 Idaho 32, 655 P.2d 926 (1982). To hold otherwise authorizes the reviewing court or appellate board to substitute its judgment for that of the agency in violation of Idaho law. See I.C. §67-5279(1); *Woodfield v. Bd. of Professional Discipline*, 127 Idaho 738, 905 P.2d 1047 (Ct. App. 1995).

Here, the Board of Commissioners had express authority to remand the matter to the Planning and Zoning Commission as it had done prior. See I.C. §67-5279. Its failure to do so

despite its express finding that it could not conclude that the Commission had even considered the self-inflicted nature of the alleged hardship was arbitrary, capricious and an abuse of discretion and is sufficient grounds for reversal and remand.

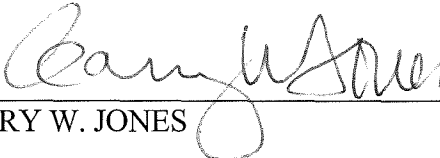
For these reasons, the decision of the Board of Commissioners' denial of Petitioners' appeal should be reversed pursuant to Idaho Code Section 67-5279(3)(d).

CONCLUSION

For these reasons, Petitioners EDWARD L. SHINN and DONILEE SHINN respectfully request that this Court reverse the Clearwater County Board of Commissioners' denial of their appeal of the approval of variances requested by Edward E. Galloway and Carole Galloway as ZV2011-2. At that time, Mr. and Mrs. Galloway's request in Subdivision Request SUB060096 cannot be sustained and must also be denied.

DATED this 21st day of May, 2012.

JONES, BROWER & CALLERY, P.L.L.C.



GARRY W. JONES

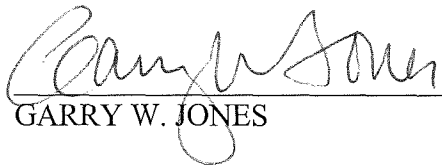
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR JUDICIAL REVIEW* was, this 21st day of May, 2012,

 hand-delivered
X mailed, postage pre-paid,
 by first-class mail; or
 transmitted via facsimile

to:

E. Clayne Tyler
CLEARWATER COUNTY PROSECUTOR
P.O. Box 2627
Orofino, ID 83544



GARRY W. JONES

E. CLAYNE TYLER, ISBN 5277
Clearwater County Prosecuting Attorney
P.O. Box 2627
Orofino, ID 83544
Telephone: 208-476-5611
Fax: 208-476-4642

Deputy: LORI GILMORE, ISBN 5877

CARRIE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

2012 JUL 2 PM 2 22

CASE NO.

CV2011-500

BY

LK

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)
ZV2011-2)
EDWARD L. SHINN and)
DONILEE E. SHINN, husband and wife,)
Petitioners,)
BOARD OF COUNTY COMMISSIONERS)
OF CLEARWATER COUNTY, IDAHO,)
Respondent.)
_____)

CASE NO: CV2011-500

MOTION TO AUGMENT
ADMINISTRATIVE RECORD


COMES NOW, the Respondent in the above entitled matter, and moves the Court to augment the record in this matter with the minutes from the Clearwater County Board of Commissioners and moves the Court to augment the administrative record in the above matter pursuant to I.C. 67-5275.

The record does not contain minutes of the Clearwater County Board of Commissioners meetings dated June 6, 2011 and June 27, 2011. These minutes include minutes from appeal hearings before the Board of County Commissioners, at issue in this case. A true and accurate copy of the same are attached.

MOTION TO AUGMENT RECORD -1

The Respondent requests these minutes be included in the record for purposes of judicial review.

DATED this 2nd day of July, 2012.



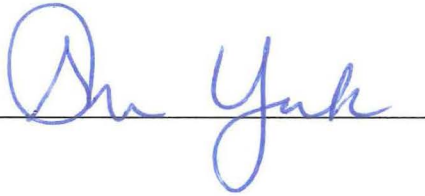
E. CLAYNE TYLER
PROSECUTING ATTORNEY

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed to the following on this 2nd day of July, 2012:

Garry W. Jones
Jones, Brower & Callery, PLLC
P.O. Box 854
Lewiston, ID 83501

By: _____

A handwritten signature in blue ink, appearing to read "Dw York", is written over a horizontal line.

COMMISSIONERS PROCEEDINGS

June 6, 2011

The Board of County Commissioners met in special session pursuant to recess of May 31, 2011. Chairman Don Ebert called the meeting to order at 8:05 A.M. Roll Call. Also present was Commissioner Stan Leach and Commissioner Carole Galloway.

Minutes and reports received, reviewed and placed on file: Statement of Treasurer's Cash report.

Agenda Changes: Chair made the motion to add to the agenda in good faith effort the purchase of a used trailer for hauling solid waste, Commissioner Galloway seconded motion, all voted yes, motion passed unanimously.

New/Ongoing/Other Business: BOCC approved and signed expense claims.

At 8:15 A.M., a motion was made by Commissioner Leach to hold an executive session to discuss personnel with Ambulance Director Les Eaves, Ken Rea and Dawn Lipke; seconded by Commissioner Galloway. Chair Ebert declared the Board to be in executive session as authorized by Idaho Code 67-2345(1) (b), to consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code. Chair, Aye; Commissioner Leach, Aye; Commissioner Galloway, Aye; motion carried unanimous. The Board directed Mr. Eaves to contact ICRMP and follow their guidance.

Les Eaves has been appointed to the Idaho State EMS Board. He will sit on the committees for education, licensing and air transport.

At 9:05 A.M., a motion was made by Commissioner Leach to hold an executive session to discuss medical indigents with Social Services Director Lauri Stifanick, seconded by Commissioner Galloway. Chair Ebert declared the Board to be in executive session as authorized by Idaho Code 67-2345(1) (d), to consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code. Chair, Aye; Commissioner Leach, Aye; Commissioner Galloway, Aye; motion carried unanimous.

The Board came out executive session and approved Additional coverage on case #020311-24 and #060111-50; denied case #050111-45. Approved and signed Assignment of Liens on case #'s 101608-03, 040208-27, 012109-13, 081409-51, 100509-05, 020110-22, 102209-09, 100509-04, 111209-15, 092909-59, 040110-32, 021710-24, 101909-08, 042210-40, 091010-58, 042810-41, 040210-34, 042910-43, 092010-60, and 111910-15. Chair Ebert made the motion; Commissioner Galloway seconded motion. All ayes, motion carried unanimous.

At 9:25 A.M., a motion was made by Commissioner Leach to hold an executive session to discuss real estate acquisition, seconded by Commissioner Galloway. Chair Ebert declared the Board to be in executive session as authorized by Idaho Code 67-2345(1) (c), to

Chair asked for the official Agency Record of the appeal of the variance granted by the P&Z Commission. Again this hearing is only for a review of that decision of the Planning and Zoning Commission and not to substitute the decision with a BOCC decision and to ensure that they applied the law properly. Chair asked if Galloway was aware of anything that should be here. Ed Galloway disputed the record, said there are items not contained in the book; look behind tab 11. He disputes the statement that there aren't any signed findings of facts on the preliminary plat. Chair asserts that there weren't any findings issued in writing, (Galloway referring to a draft copy). Ed Galloway read the draft form of findings on a hearing of the preliminary plat that took place in 2006. Ed Galloway read from an excerpt from a previous meeting in the Commissioner's office. Chair noted that what he read doesn't have a bearing on today's proceedings, if he read it at the P&Z hearing then it should be part of the transcript.

Tyler reviewed the question, should the item questioned by Ed Galloway, be added as a supplement to the agency record. This is an unsigned document. Tyler advised that the record of the agency is placed in a binder form and Mr. Jones has received all those documents just not in a binder. Jones said we are here today on appeal of the recent decision on the variance and that is what he is prepared to testify on. Clayne Tyler asked to get the record straight; did Garry Jones receive everything that is contained in the binder? That is everything submitted; only thing not there is the notice of the change of dates for hearing on appeal.

Galloway states that he can't differentiate between the subdivision and variance. Chair stated that today's hearing is only on the variance decision. Tyler asked if Mr. Jones disputes adding the letter to the record? Jones stated he would have to view the documents before allowing the documents into the official record. (These are only a draft copy of findings and excerpt of Commissioners' Minutes)

Ed Galloway wants to submit two letters that had been part of the past preliminary hearing. One letter from Shinns and one letter from Sonny Kinzer. Chair asked if this part of the evidence submitted at P&Z hearing. Galloway stated it was part of the preliminary plat that was passed by P&Z and BOCC. Now this was overturned because it wasn't heard properly and has to be redone. Galloway's opinion is that it's double jeopardy.

Chair advised that the letters if not part of the P&Z hearing on the variance cannot be submitted as new testimony. Today is a hearing on the appeal of the variance. Clayne Tyler advised that the Agency Record is the basis of the appeal of the P&Z decision on the variance.

Garry Jones presented his argument for the Shinns. There are 2 appeals today. One appeal on the variance decision; 2nd on the preliminary approval of the SSB. The 2nd one is dependent on the appeal decision.

The appeal of the variance is based on the following: The argument by Galloway talking about findings on an approval on the preliminary already made has no bearing on today's appeal since it is on the internal roads. Today's appeal is of the decision on the three Variances for the External road width for access to the subdivision, changing the width and finished surface width and dedication to the public. These three variances are on the

consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code. Chair, Aye; Commissioner Leach, Aye; Commissioner Galloway, Aye; motion carried unanimous.

At 10:05 A.M., the BOCC held an open hearing to consider the Appeal of the Planning and Zoning Commission approval of the following zoning applications of Ed and Carole Galloway. Prosecutor Clayne Tyler and P&Z Administrator Bobbi Kaufman was present along with Attorney Garry Jones, Edward and Donalee Shinn and Chris Marvin. No other members of the public were present. This session was tape-recorded.

Chair opened the hearing with a brief explanation of how the hearing will run. Chairman Ebert explained that the Board of Commissioners will only be hearing testimony on material given at the P&Z hearings and review the P&Z Commission's action.

Commissioner Galloway disqualified herself from the hearing since she is party to the application. Ms. Kaufman submitted a copy of an appeal of the following application from Attorney Garry Jones representing adjacent landowner Ed Shinn. The appeal is on the following:

(ZV2011-2) A Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

- Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
- Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
- Set aside the requirement to dedicate the access road to public use as required by § B.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

(SUB060096) Final plat stage of the full platting procedure for Hidden Valley Subdivision re-named Southfork Estates, a Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots: Lot 1) 13.14 acres, Lot 2) 9.23 acres, Lot 3) 9.81 acres, Lot 4) 10.09 acres, Lot 5) 10.33 acres, Lot 6) 11.28 acres, Lot 7) 9.84 acres, Lot 8) 6.67 acres, Lot 9) 8.98 acres, Lot 10) 13.08 acres. This is a continuation of the 17 November 2008 public hearing. This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1. This application was stayed until the appeal is heard on the variance.

On March 21, 2011 P&Z Commission approved the variance application with conditions. On March 25, 2011 the P&Z Commission and Ms. Kaufman received Notice of Appeal by Garry W. Jones from Jones, Brower & Callery, PLLC on behalf of Edward L. and Donilee E. Shinn on the decision of the ZV2011-2 and SUB060096.

external part of the plat. The Middle Road right of way would reduce down from 60 feet and the finished surface down from 24 feet to 15 feet and the dedication to the public from the County right of way to the access road to the subdivision. The Ordinance requires certain conditions have to be met. There are special circumstances that make it impractical or create a hardship on the applicant in order to meet the ordinance requirements. There are several other requirements, but the first one is the most important. The ordinance further states that the Commission needs to make a findings that these conditions do exist. They find that there is an undue hardship or there are unique circumstances that exist and based on that they grant the variance. Jones states that he recognizes that apparently there is a written statement signed by the chairman of the P&Z Commission that says that they made those findings, but I don't know if the BOCC reviewed the entire transcript but there is absolutely no discussion on the findings of fact on the transcript. There had to be discussion by various members of the Commission that said that these conditions exist or this variance can't be granted. I can't find any discussion by the Commission that said that the conditions exist or that they bear any undue hardship on the Galloways. That wasn't said by anyone on P&Z Commission. It was interesting reading about some of the comments. Jones paraphrased comments made by the Chairman said "our subdivision ordinance has an old rule that primarily relates to a city setting and not to the rural setting and we have to think out of the box." Think outside of the box is a direct quote that is taken from page 105 of the transcript. That is something the chairman should not say. The County ordinance says what it says, if you think it needs to be changed then change it, but until it is changed you base your decisions on what the law says to follow. You don't think out of the box to determine if there is a hardship. At the very most the hardship presented by the Galloways is that it's too expensive to build a road. Jones submits if the cost of building a road is a hardship then you might as well allow everything because spending more money is a hardship. Then anyone can make that claim as being a hardship. Any developer can use that excuse to get around the ordinance.

Jones described the access from Middle Road; it's a paved road from Cavendish to Brown Road then it breaks to Middle Road, which narrows down to two tracks and this is the access road turns into. A map is reviewed and during testimony Simon explained Middle Road from this point is a dirt road, not maintained; ungraded and non drained. The purpose of the ordinance is for people who buy property will have all weather access from the County Road to their property. If you don't meet the conditions of the subdivision ordinance you don't subdivide. There have to be facts presented in order for P&Z to make a determination. Those facts simply aren't there; the decision they made is legally not a proper decision. Jones asserts that P&Z in making this decision is in fact amending the County Ordinance. They are saying the Clearwater County Subdivision Ordinance says you only have to have 30 feet access from County right of way and only 18 feet of surface road to the subdivision. Anytime you add any types of exceptions without a unique situation existing you have accentually changed your ordinance. If the Board wants to change the subdivision ordinance that's your jurisdiction, not P&Z's province by granting a variance. Those special circumstances have to be there and they have to be facts and testified at the hearing in order to make that decision. It's not there in the transcript. There is not hardship.

No facts or testimony were presented which would authorize the issuances of a variance under the terms and condition of the Clearwater County Subdivision Ordinance. Also, Jones states that they appealed on the easement in which the Galloways propose to use for access to the subdivision property. The easement does not allow that road to be utilized for the public for ingress and egress for parties other than Mr. and Mrs. Galloway. The easement

document has the statement in it that it is not be used as a public road. If you going to have ten lots and each lot has two cars tell me how that isn't a public road. That easement has been used in the past for hauling logs by Galloway and nothing has stopped his private use of the road, but the easement specifically states it's not to be used as a public right of way. It is not appropriate for a variance to be granted from the requirement that access to the subdivision be dedicated for public use. Finally, the statements made in the hearing itself that the Board needs to consider because they improperly granted the variances. Should you choose to grant the variance know that the road standards have to be considered?

The type of road being built is another concern. At the hearing statements made by Rob Simon that the roads have to be built to LHTAC standards were discussed and Galloway states the road in his subdivision predates the time that LHTAC standards were adopted. Jones can't establish whether that is factual. Any road has to be built to LHTAC standards as an all weather road. Galloway states his roads will have bull rock plus 3-4 inches in depth with $\frac{3}{4}$ inch gravel and that is an all weather road. Jones disputes claim since the area gets heavy snow and access has not been maintained in the winter. There is a road maintenance agreement that should be imposed. The people buying in the subdivision will not have public access it will be over a private access and will not be able to maintain an all weather road.

The appeal of the P&Z Commission recommendation for approval of the subdivision prior to the Shinn's appeal of the issuance of variance being determined by the Board of County Commissioners. The attorney recognized that the appeal of the subdivision is a pending decision based on the variance being granted.

The actual condition of the road was reviewed. An all weather access is to be provided for the people buying the properties. Garry Jones shows that the variance is amending the ordinance which isn't the province of P&Z and their basis for approval.

There was no hardship proven at the P&Z hearing. Jones states that the easement specifically states it is not for use as a public road. The statements at the hearing should be taken into consideration. The comments are important to what standard is the road going to be built. The LHTAC standards are applied to the roads. The Galloway's explained that his road building precludes the LHTAC standard as adopted in the County Ordinance.

The easement itself prohibits the use as the access for the subdivision. It's going across a private easement. The easement has language which is for discussion in civil court action, but there is good decision law at this time. Jones' position is that the type of easement the Galloways have doesn't grant the public access use. The type of easement was never granted in contemplation of public access. Jones said Tyler can read the easement document and see that when the easement was created it was for private use. The Galloways do not have the type of easement to grant use for access to a subdivision.

Garry Jones states that findings of facts don't support the finding of a hardship in order to grant the variance. There were not sufficient grounds for anyone to make that determination and no discussion at the hearing contemplating hardships. No findings were found and without findings there is no legal basis for granting the variance. Since there was not any public testimony supporting the finding of a hardship a variance shouldn't be granted. Jones concluded his testimony.

Clayne Tyler asked for clarification and looks at the variance provision in the County Ordinance. The language of the findings which has 5 specific reasons for granting a variance was reviewed. The hearing transcript was reviewed. Jones was reading from the ordinance itself and that supports the appellant's position today. Finding No. 1 is there is no specific reason identified to grant the variance.

Chair asked for questions, there being none; Ed Galloway has a chance to respond. Ed Galloway explained that the variance is in three parts. The external access road was part of the appeal. Ed Galloway explained that the evidence was not part of the record was not included. He states that the P&Z granted a variance on the internal roads, there was nothing done on the external road access. Galloway states that the acting P&Z Administrator in 2006 told him the County had no jurisdiction on external roads. There were two subdivision applications approved by the BOCC that have access over easements to them from the County road to Galloway property. He states that he was told the County doesn't have jurisdiction on the external road. Mr. Jones wasn't there during those hearings but the Shinn's were. Mr. Jones is new to the County, but Galloway states he has lived here for 65 years. Galloway states that the County ordinance is old and doesn't pertain to rural low density subdivision. Galloway states he begged the County to rewrite the ordinance to change it to allow for a rural setting. Each time he has to get a variance on each subdivision in order to get them passed. Galloway expanded on the past subdivision he has made they required variances to fit the rural setting. It's been done for many years this way. Chair asked if the other subdivision that was approved came into the same 15 foot bottle neck as this one does. No, I will get to that later.

Galloway wants to submit letters that wasn't presented at the P&Z hearing. Clayne Tyler asked if was presented at the hearing then if it wasn't then the evidence can't be submitted as new testimony. The portions of the letter if read at the hearing would be of record. The transcript would contain anything that was read at the P&Z hearing. Chair explained what the BOCC is hearing today only the legal proceeding of P&Z's decision. Chair explained if it's not in the record then it can't be added today.

Galloway's rebuttal on the variance on the roads has been made many times over and over. The County has issued variances where reasonable roads can be built. The land in question is level and the road supervisor did submit that there is room for an 18 foot road. He again states that there isn't a rural subdivision ordinance for the rural settings and stated that the variance has been approved on other subdivisions. There wasn't any evidence of concern on external roads.

The public right of way is being questioned. The easement states that is not to be used as a public right of way. The right of way is being questioned now when it wasn't brought up on another subdivision. Galloway states again another of his subdivisions was approved and no question given on external access. The road standard expanded. The LHTAC standards were reviewed. Ed Galloway talked about building an 18 foot wide all weather roads with bull rock and ¾ minus rock on top. It will be up to the County standards of road construction. Galloway expanded on the lack of County roads being actually built as well as his. Galloway

told P&Z that it will be an all weather road. The County roads don't have bull rocked base. The easement was discussed.

The easement of fifteen foot width was not from the Shinns but from the grantors of the original easement, Don and Harold Johnsons to the Galloways. The easement was for the Galloways and their heirs or assigns. The easement is the Galloway's access to their land. Galloway explained that he can give legal easement to assigns according to his legal easement. The fifteen feet was reviewed for the width being a total of 30 feet. Don Johnson gave 15 foot easement along section line and Harold Johnson gave 15 feet along the west side of the section line. The survey didn't agree with the intent of the easement. Galloway states that this road was reviewed by fire chiefs, road supervisor prior to the hearing. The easement is strictly access to Galloway land. The access for the subdivision stalled the final approval to the subdivision in 2006.

Garry Jones states that the record speaks for what people said in the testimony of the P&Z hearing and today is not the time for new testimony or evidence to be submitted. Galloway states that the variance was granted based on what was presented. Galloway did not read the transcript. Jones did not bring up the 15 foot bottleneck; it's not a problem because the road goes from 30 foot wide to a fifteen foot gate before entering into the 60 foot wide road in the subdivision. The use of the easement as public right of way is the problem.

Chair and Galloway discussed the decision today the Board makes. The Board decides whether P&Z followed the process properly. Right or wrong decision is supposition being made by Galloway. BOCC makes a decision on whether the P&Z Commission made a legal decision on the variance.

Galloway asked for the Board to ask Galloway questions so he can present facts. The hearing proceedings were reviewed. Galloway asked for the same courtesy to answer questions from the Board. Ed Galloway states that he assumes Carol Galloway can speak if she has comments.

The question was discussed if Carole Galloway should sit on the other side of the desk. Jones has no objection of Mrs. Galloway speaking on the application only as one of the applicants. Carole Galloway said it is being made more complicated than what is it before the Commissioners. The P&Z findings of facts were correct in her opinion. The hearing was very long and she was happy with the P&Z decision. Carole Galloway stated that she thought everyone is making a bigger problem out of the process than what there is. The findings of facts are in dispute. The meeting went on for a long time and any questions should have been covered during that time.

Garry Jones offered rebuttal to the comments from the Galloways. He does also have history in Clearwater County. The points brought up should only be pertinent to today's action. Whether the ordinance is outdated is not being heard today. The subdivision ordinance today as its written is what has to be followed. Galloway's question of why this variance is being questioned when other variances have been granted; why is this one different. The variance is part of the ordinance to protect the applicants' rights and other land owner rights. Where is protection of the Shinn's rights? Is it not placing a hardship on them? There may be situations when the variance has been approved just because there

wasn't anyone that objects. The Shinns object to the use of the easement and asks the County to apply the ordinance accordingly. If the County applies the LHTAC standards then it should apply to the road standards in an application.

Galloway rebutted to Jones comments on the access to other approved subdivisions. There are others that have objected to subdivisions that were passed. The LHTAC standards came into ordinance were added after his application. (Mr. Galloway's opinion) As to the actual roads in the County well he can only think of one where the LHTAC standards were required.

Chair asked if any one objects to how this hearing is being ran. Mr. Jones has no objections and Galloway has no objections. Mr. Tyler has no objections. Chair closed the floor to testimony. Commissioner Leach needs to ask a question.

Commissioner Leach asked if the Johnson's owned the land that the neighbor Ingle currently owns. The answer is No.

Commissioner Leach asked Tyler about Galloway's assertion that the County does not have jurisdiction over the connecting road outside of the subdivision; do we or don't we. Tyler advised that the County does but it would better explained by the findings. Galloway said he can explain, Chair told him floor was closed to testimony. Tyler had a question on the landowner of the adjacent property. It is Ingle. The County road standards, how does that apply to today, the LHTAC standards were adopted many years ago?

Chair asked for explanation of the easement since it 15 feet on each side of the section line until it comes down to Galloway's property does it provide access to Ingles' property. Galloway states that Ingle's access is from the top of his own adjoining land. The Ingles don't have access through that easement.

Chair stated that concludes the hearing. What's appropriate now, we take the information under advisement and make a decision later. Tyler explained that the decision will be submitted in writing. Tyler asked for submittal to written rebuttal from petitioner or respondent. Jones doesn't desire to submit written rebuttal but desires the decision be made in a public setting. Mr. Jones asked for written notice of when the decision is being made and then asks for written findings. Tyler asked for enough time for him to read the official record. There isn't time for a meaningful discussion. Chair stated that it will be time for a decision not for hearing any testimony. Clayne Tyler said Chair was right. Two weeks was suggested by Tyler. Chair made statement that Galloway's have waited a long time for a decision. The Board wants to get the decision done correctly. There will be a decision set for June 27th at an open meeting at 9:30 AM. Jones agreed to a Monday meeting and would like to be here for the deliberation. Galloway asked what the Board will do that day; it will just be the Board's deliberation no other input. Deliberation and decision has to be made public. Chair explained he will ponder the testimony and record. No discussion will be held between the Commissioners. The deliberation and decision will take place in public.

Commissioner Leach made the motion to take this information under advisement and set the decision for 9:30 AM on June 27th. Chair seconded motion; both voted yes, motion passed unanimously. Galloway asked what if it's a split decision. No response.

P&Z update with Bobbi Kaufman is the notice of flood meeting in Lewiston. The numbers of building permits have increased.

At 11:20 A.M., a motion was made by Commissioner Leach to hold an executive session to discuss pending litigation with Sheriff Chris Goetz, seconded by Commissioner Galloway. Chair Ebert declared the Board to be in executive session as authorized by Idaho Code 67-2345(1) (f), to consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code. Chair, Aye; Commissioner Leach, Aye; Commissioner Galloway, Aye; motion carried unanimous. No decision was necessary.

Sheriff Goetz provided a report from the department. They are still soliciting applications for hiring three patrol positions, jailer and dispatcher for the six openings in the office. The salary and benefits are in line with neighboring agencies. There was only one application to date and no one is passing the back ground check.

The department is looking into purchasing a motorcycle for the Backcountry Deputy. They found a 650 cc motorcycle for \$5700. Commissioner Leach said it would be too heavy for trail riding or off road. The price for the 650 is considerably lower than the price of a 250 cc in a dual sport model. Suzuki only makes a 450 in dual sport. The KMC brand is considerably more expensive. The 250 model is \$6400. Hanson's Garage has the 650 cc in stock for the \$5700 price. The Backcountry Deputy demoed the 650 and felt it would work. The motorcycle is 30 lbs more than a 450, but sits 4 inches lower. The department could purchase it and if it doesn't work then resell it. The money would come from ATV funds available. They have the money available. The consensus is to look at it and if the mechanic agrees purchase it. There is enough money in fund for the \$5700.

The vehicle purchase budget is for replacement patrol vehicles for the Weippe and Pierce Deputies were reviewed. They only purchased one replacement vehicle. Now they are looking to replace another high mileage vehicle. They want to replace it this year with the remaining budget with the ½ budgeted vehicles. There is \$12,000 in unanticipated revenue brought in by Title III funds; but in order to spend it this requires the budget to be re-opened. He wants to replace the high mileage vehicle. It could be used as carryover for next year and spend it on a vehicle next year. Hanson's are not sure when they can order a 2012 model under bid assist. It can be spent this year on a vehicle off the or next year. No decision was made they will think about the vehicle purchase.

Clerk Carrie Bird presented information on a letter from ACLU requesting information on the public defenders. The ruling states that the County has to have an annual report from the public defenders that has a contract with the County. The report should list the numbers of cases, time per case and types of criminal cases annually. Chair asked the Clerk to quarry the other clerks to see if they have received the ACLU request. BOCC asked the Clerk Bird to talk with Clayne Tyler about the request.

The Delta Dental insurance premium was reviewed. The increase for the next fiscal year is about 15 percent. There is a request included in the notice about delta vision and/or hearing that can be offered to employees as a benefit. The policy can be signed up for providing that

there are least 10 employees willing to enroll. The BOCC has to agree to allow for the extended policy and ask the employees if there would be enough interest in the plan.

IT/Networking/Re-addressing report was reviewed with Angela Vander Pas. Ms. Vander Pas asked for use of a vehicle for E-911 for GPSing and house number installations. The fax server monthly bill being paid out of Data Processing now, but it was not budgeted and may run out of money soon. The monthly cost is \$225. The consensus is to pay for it out General Miscellaneous.

Commissioner Leach explained that he met with the young man working on the cardboard recycling. He is a hard worker that could take on the cardboard pickup too. This could be addressed at budget time.

Also the property below the ATV training course could be cleared by road and bridge for stock piling woody debris to hold until the chipper can come in and chip a large pile as needed. This would also create a place to dump slide material as the road crews are cleaning ditches. The County can take separated limbs or tree stumps out of the main stream and keep it from having to be hauled up to AITCO's landfill. The grinder can take all the clean limbs or even wood pallets. Commissioner Leach will inspect the site with Rob Simon.

At 1:40 PM Commissioner Leach left the session to attend a meeting with Rod Brevig, STC and Mellisa Stewart, Assessor. The session still had a quorum and they continued the session meetings. He returned to the session at 2:40 PM.

Rob Simon reported on the road crew work. The applications for the operator and mechanics position were reviewed. There may be another person wanting to apply. The operator position had a deadline and is closed. The mechanics position is open until filled.

At 2:05 P.M., a motion was made by Commissioner Leach to hold an executive session to discuss personnel and possible litigation with Rob Simon, seconded by Commissioner Galloway. Chair Ebert declared the Board to be in executive session as authorized by Idaho Code 67-2345(1)(b)(f), to consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code. Chair, Aye; Commissioner Leach, Aye; Commissioner Galloway, Aye; motion carried unanimous. No decision was necessary.

The road and bridge lot was reviewed for where a fence could be located. Discussion was held on fencing the property at a cost of approximately \$5,000. Chair asked for a per foot price quote.

Simon will attend T 2 Advisory Board meeting in Boise, Wednesday, Thursday and Friday.

Stripes A lot will quote a price for a sealcoat layer and striping in the courthouse parking lot. The County could do the seal coat work if the material is something they already have.

The second Transfer Station trailer that was being repaired in Lewiston is back and is now DOT certified. This repair cost approximately \$8,000. The trailer viewed in Ellensburg for the solid waste hauling was discussed. It's the only used one found that could be

purchased. Could KBC trucks pull a four axle trailer? The one in Ellensburg is selling for \$23,000. There will be some work needed on the floor. Having a fourth trailer could save some money when others are being repaired because the County had to rent one trailer from KBC. The used four axle could be purchased for \$70,000 vs. new at \$100,000. The consensus is to not purchase a new one. There is money in the general capital line for purchasing a trailer. Chair made the motion for the purchase of the used trailer of \$23,000 for solid waste hauling; Commissioner Galloway seconded motion, both voted yes, motion passed unanimously.

The resolution for the declaration of surplus equipment and vehicles was submitted for review and approval. Chair made the motion to declare the surplus equipment and vehicles are no longer used by the County and signed Resolution #11-06-09 to offer the items at public auction. Commissioner Leach seconded motion; all voted yes, motion passed unanimously.

RESOLUTION # 11-06-09
BY THE BOARD OF COUNTY COMMISSIONERS
CLEARWATER COUNTY, IDAHO

WHEREAS, Clearwater County is the owner of equipment and vehicles that are no longer in use; and

WHEREAS, the County desires to sell this excess personal property as provided by Idaho Code 31-808, now

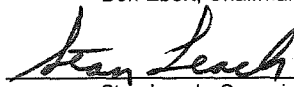
THEREFORE BE IT RESOLVED, Clearwater County Commissioners declare the following vehicles have been deemed no longer necessary for conducting County business, and will be deleted from the inventory lists of Clearwater County:

Blowbox Lay Machine	0514-021	\$1500
Ford Motor-Dodge Distributor	6870EE2574	\$100
10,000 Heating Oil Storage Portable Tank		\$500
Fifth Wheel Dolly		\$100
275 Used Oil Tank		\$10
Snow Plow (Old #4 Truck)		\$25
1972 Dodge 500 Truck-Gas	D81GL2J562803	\$100
Asphalt Heater-Wylie	TMH102 38097	\$100
Emerson Heater	PT 1338-91	\$500
1980 Ford Boom Truck F700	F82KVG8558	\$3,000
Rex Roller-Vibratory	7HZ265 Rex Sp 700	\$1500
1993 Dodge 4X4	1B7HM16Y7PS196592	\$1,000
1986 Chevy 4X4	1GCEK14H2GJ154820	\$1,000
1996 Chevy 4X4	1GCHK34R3TZ191971	\$2,000
1999 Chevy Tahoe 4X4	3GNEK18R0XG108964	\$1,000
1999 Chevy Tahoe 4X4	3GNEK18R9VG149848	\$1,000
1985 Jeep Cherokee 4X4	1J4FJ28S3SL587783	\$1,000
1993 Chevrolet 1500 4X4	2GCEK19K7P1183194	\$400
2001 Dodge Dakota 4X4	1B7GG2AN615111142	\$500
1994 Jeep Cherokee 4X4	1J4FJ27P7RL183960	\$500

IT IS THEREFORE FURTHER RESOLVED, that the vehicles be offered for sale at public auction to the highest and best bidder by oral bids for the entire payment on the 22nd day of June, 2011, at the RF Coon Logging Auction at 9 A.M. at 2240 Michigan Avenue, Clearwater County Courthouse, Orofino, Idaho.

DATED and DONE this 6th day June, 2011.


Don Ebert, Chairman


Stan Leach, Commissioner

Carole Galloway, Commissioner

Attest:

Carrie Bird, Clerk

Commissioner Leach will attend the auction and have on hand the titles for the vehicles sold in order to sign off on them the day of the sale.

The BOCC was asked by Pat Watkins, CVH to see if someone will patch the potholes on the lower entrance to the hospital. The holes have grown larger and dodging them is dangerous for patients travelling over it.

The bypass road at MP Dent Bridge Road was inspected and broomed some of the larger rocks off it. The slide doesn't appear to have moved.

Walt Harney notified the Board that the Jeep used by the Building Inspector is losing the safety integrity in the body. It needs to be gotten rid of now. It's not safe to sale it, it could be sold for scrap.

Don Gardner, Emergency Manager presented the All Hazard Mitigation Plan. The All Hazard Mitigation Plan was completed by Northwest Management. The final review was approved by the State and FEMA. The Board has to approve and sign

Commissioner Leach made the motion to approve and sign Resolution #11-06-10 adopting the declaring county support and adoption of the updated Clearwater County Multi-Hazard Mitigation Plan and Community Wildlife Protection Plan. (2011 Revisions).

Mr. Gardner advised that the offices of the Coon Annex Building have been left unlocked and one night all the lights left on. There are security concerns with sensitive documents. The building being unlocked and lights left on are a big concern.

The paper recycling bags are not being picked up and brought to the courthouse. The cardboard is not getting picked up either.

There will be security cameras installed to look at the exit doors. The DMV will have a camera in the office.

Treasurer Dawn Erlewine reported that there are 5 remaining personal properties or trailers with delinquent taxes. The properties have gone to Warrants of Dstraint and posted for Sheriff's Sale. Does the County want the Treasurer to bid on the trailers Friday, June 10th? There is one trailer that the person owns real property and the taxes can be attached to that.

There is a cabin on lease property with taxes owing. It is an LR that cannot be bid on, since no one can purchase it. It's on Potlatch ground and if the taxes aren't paid they will destroy it. The cabin wants it gone since the person leasing it is now deceased. The Sheriff can pull this warrant. Mike Goodwin said it's just inhabited by rats. The bulk of the tax bill is solid waste. The cabin taxes can be cancelled.

There is a trailer in Bev Miller name that had solid waste cancelled and only \$20 in taxes. Ms. Erlewine is just checking to see if she is to not bid on the properties and will look at whether to cancel and go to warrant at later date.

Approve/Deny/Sign: The BOE notice and Excess property notice were approved for publication.

Jeremy Gering dropped in to talk about the painting at the Prosecutor's office. They are working at picking out colors. Chair Ebert directed him to work that out the time with Clayne Tyler and proceed.

Also the Board needed to talk with him regarding the lights being left on and the doors left unlocked. The complaints from DMV were reviewed. The office doors being left unlocked is a concern for the confidentiality in Juvenile Services, DMV and Emergency Management. Mr. Gering apologized for leaving them unlocked.

If Jeremy Gering will not be cleaning on certain nights he needs to let someone know if he is not going to be there and when he will be there.

At 5:05 P.M. the Board adjourned until June 13, 2011.

ATTEST:


Carrie Bird, Clerk



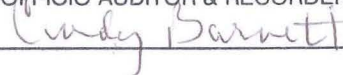

Don Ebert, Chairman

STATE OF IDAHO
County of Clearwater

I hereby certify that the foregoing is a full, true and correct copy of an instrument as the same now remains on file and of record in my office. WITNESS my hand and official seal hereto affixed.

this 26th day of June A.D. 2012

CARRIE BIRD, CLERK OF THE DISTRICT COURT EX-OFFICIO AUDITOR & RECORDER

By Deputy 



COMMISSIONERS PROCEEDINGS

June 27, 2011

The Board of County Commissioners met in special session pursuant to recess of June 21, 2011. Chairman Don Ebert called the meeting to order at 8:05 A.M. Roll Call. Also present was Commissioner Stan Leach and Commissioner Carole Galloway.

Minutes and reports received, reviewed and placed on file: District II IAC Meeting Minutes June 9, 2011; Clearwater Management Council Minutes April 27, 2011 and Clerk's Election Costs report for May 11, 2011.

Agenda Changes: John Allen cancelled his appointment for a Public Health update and rescheduled for next week.

New/Ongoing/Other Business: BOCC approved and signed expense and payroll claims.

Assessor Melissa Stewart asked for approval to take over the office behind DMV where Don Gardner just vacated. They would like to move the vault and lock it with a deadbolt for security purposes. This would open the floor plan for air circulation.

The Board discussed allowing use of one small office to open up the back of the DMV office for storage and keep the front office space for extra meeting room. The consensus is to allow the change of space to convert the back office for DMV.

The security cameras are in place and have views of the entrance door and exterior of the building of security issues. Don Gardner installed them and will monitor the tapes. Security of the building was discussed.

Ms. Stewart presented an MOU for setting up credit card payments. The company will provide up to three machines and the training. The users will be charged the 3 percent fee. The company will provide the equipment and training. The company is used most frequently by agencies throughout the State.

The DMV staff is working with the State to set up online registration of the vehicles, boats, ATVs. The online registration uses a credit card also.

Commissioner Leach made the motion to approve and sign the MOU for Electronic Transaction and Deposit with PayPort OTC in order for the DMV to process credit/debit card payments. Chair seconded motion; all voted in favor, motion passed unanimously.

Dean Thompson dropped in to apologize for the application for R&B operator. The County had to retract a job offer for false information on the application. He didn't pay attention to the question. Mr. Thompson thanked the Board for the interview and chance for a job.

At 9:05 A.M., a motion was made by Commissioner Leach to hold an executive session to discuss medical indigents with Social Services Director Lauri Stifanick, seconded by Commissioner Galloway. Chair Ebert declared the Board to be in executive session as

authorized by Idaho Code 67-2345(1) (d), to consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code. Chair, Aye; Commissioner Leach, Aye; Commissioner Galloway, Aye; motion carried unanimous.

The Board came out executive session and approved case #020711-25 on reconsideration and approved case #050511-44. Approved and signed Clerk's Statements on case #051611-46; Approved and Signed Lien on case #061311-53; Release of Liens on case #032911-33 and #032911-34. Also approved and signed Order to Continue on case #122810-18. Chair Ebert made the motion; Commissioner Galloway seconded motion. All ayes, motion carried unanimous.

The Medical Utilization Management Agreement for Medical Reviews was reviewed and signed. This is a renewal of the current agreement of review of medical cases by Dr. Damrose. Commissioner Leach made the motion to approve the renewal and sign the Utilization Agreement; Commissioner Galloway seconded motion. All ayes, motion carried unanimous.

At 9:35 A.M., the BOCC held an open hearing to consider a decision on the Appeal of the Planning and Zoning Commission approval of the following zoning applications of Ed and Carole Galloway. Prosecutor Clayne Tyler and P&Z Administrator Bobbi Kaufman was present along with Attorney Garry Jones, Edward and Donalee Shinn. No other members of the public were present. This session was tape-recorded.

(ZV2011-2) A Variance request by Edward & Carole Galloway to vary access-road specifications under Article IV of the Clearwater County Subdivision Ordinance as they apply to the Galloway's platted subdivision request SUB060096. SUB060096 has preliminary approval. The variance request applies to an approximate 2,000 foot roadway providing access between Middle Road and the proposed subdivision. The details of the variance request follow:

- Change right-of-way width from 60 feet as required by § D.2 to 30 feet and down to 15 feet at the actual property line;
- Change surfaced or finished width from 24 feet as required by § D.4.d to 18 feet and down to 15 feet at the actual property line; and
- Set aside the requirement to dedicate the access road to public use as required by § B.

This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned Low Density Rural District F-1.

(SUB060096) Final plat stage of the full platting procedure for Hidden Valley Subdivision re-named Southfork Estates, a Class B Subdivision request by Edward & Carole Galloway to divide 99.82 acres into 10 lots: Lot 1) 13.14 acres, Lot 2) 9.23 acres, Lot 3) 9.81 acres, Lot 4) 10.09 acres, Lot 5) 10.33 acres, Lot 6) 11.28 acres, Lot 7) 9.84 acres, Lot 8) 6.67 acres, Lot 9) 8.98 acres, Lot 10) 13.08 acres. This is a continuation of the 17 November 2008 public hearing. This property is located in Section 09, Township 37 North, Range 01 East, in the Freeman Creek area off of county road Middle Road, Lenore, ID-Clearwater County; Zoned

Low Density Rural District F-1. This application was stayed until the appeal is heard on the variance.

Chair explained that this appeal process is not done very often by the BOCC so he spent great amount of time on the studying the process and reviewing the evidence to make sure the appeal is done correctly.

The appellant focused the appeal on the item of undue hardship has to be found. There are 5 criteria for a hardship to be met in order for the grant of a variance.

Commissioner Leach asked for an explanation of the Board's function today. He said that the Board can uphold the P&Z decision or action. Tyler stated the process for decision on record.

Clayne Tyler read the criteria for the appeal decision. The Board is reviewing the variance decision. Your function is to determine whether or not the P&Z Commission findings were supported by substantial evidence and if so whether their conclusions properly applied the zoning ordinance to the facts that they found. And whether or not P&Z found facts to support the evidence they found to apply to the zoning ordinance. That is supported by Idaho Case Law. He read Idaho Supreme Court case law. The focus of the appellant's argument is that no establishment of undue hardship was met and is the basis of the appeal of the variance. The undue hardship will have to be the focus of the Board's decision today. Tyler researched the guidance to define what constitutes an "undue hardship," through case law.

The undue hardship as defined by Idaho Code 67-6516 was reviewed by Mr. Tyler, along with the Supreme Court case law. No clear definition is given; it has to be looked at as case by case analysis. Each case must stand alone. In case law definition as contained in *Wohrle vs. Kootenai County case, an Idaho Supreme Court case*; the applicant must prove to the Board that he suffers an undue hardship because of the characteristics of the site; the specific characteristics of the site or the bearings on the conflict of public interest. Typically the undue hardship in an ordinance requires special circumstances or conditions exist that are peculiar to the property and not a condition in general to the land in the neighborhood. That is the closest Tyler finds for a definition of "undue hardship."

The Board has to look at the specifics of the property and not the general area and whether or not an undue hardship is created if the variance is not granted; and whether granting a variance would be against the public interest or violation of the purposes or policy of the County ordinance.

Tyler reviewed case law of where the courts upheld based on the findings of an undue hardship because of the costs of building a road construction. (*Blaha vs. Board of Ada County Commissioners*; several appeals are on that case.) The costs of road construction involved extensive realignment and reconstruction of a public road in that case; (cost v benefit) the costs to the developer to comply with the ordinance created the undue hardship. (These are about the best examples for explaining "undue hardship.") To set the standard for review of the determination whether or not the decision met the ordinance standards; that the P&Z Commission made findings supported by substantial evidence and whether or not they properly applied the ordinance to facts. The appellant focused on the hardship element.

There were a couple of other issues that the appellants raised on the nature and scope of the easement language itself. The question of a hardship being created on the owner of the property that the easement crosses for access to the subdivision is an issue that is separate.

Tyler explained these are the standards in which the Board has to review the question of was the ordinance applied to the evidence to grant a variance? The BOCC has to look at the record of evidence.

Commissioner Leach reviews for clarification; that this Board is a review of that process and cannot take new testimony or evidence into consideration. Tyler suggested to look at the record and further explained the decision can be made on the following options. The BOCC can uphold the P&Z decision and which requires you to make a findings of facts that the P&Z Commission made a findings supported by substantial evidence; based on the 5 elements listed in the County Ordinance and that they properly applied the ordinance to the findings of facts. Or reverse the P&Z decision on the variance; if the BOCC should reverse the P&Z decision and you remand the decision back to P&Z for a hearing to establish whether their findings are based on hardship. (Tyler reviewed the case law) Or reverse the decision without remand for further hearing (case law to support the authority for it). Or remand it back to the P&Z Commission because they failed to make factual findings and acted arbitrarily and capriciously; then remand to P&Z for further hearings to see if there are facts that exist to establish that the findings for a decision and that the ordinance is being adhered to.

Commissioner Leach explained that he started with the definition of the variance and the discussion about the undue hardship; he went back several times to look at the testimony from the hearing; in his opinion there isn't any place that addresses the hardship. In the record of P&Z discussion it may be implied but it wasn't talked about anywhere of the specific finding of the existence of an undue hardship. (Nowhere in the process was it specifically addressed as a hardship based on this evidence.) What Leach heard from Tyler's options is that it could be remanded back to P&Z with direction to answer a specific question or they (BOCC) can give instructions to the P&Z Commission to ask for a direct answer on whether a hardship exists rather than it being implied. (In order to clarify the vagueness of the testimony on establishing a hardship.) Tyler states that is the preference to is ask specific questions if it's remanded and to give specific instructions to the P&Z Commission. Again, Leach said that all through the evidence review it appears that there is a hardship but it is implied not spelled out. There is no statement made that this is an undue hardship because of a, b, c, etc. in the reasoning.

Chair explained that he struggled with the P&Z decision too. There is not enough evidence to uphold the P&Z decision. There is no clear statement made throughout the process that said this is an undue hardship because of anything, it's vague. "I believe it is implied." Because it is implied and there is enough evidence to say it's implied, the Board can't reverse the P&Z decision without substituting our judgment for theirs. Because the evidence is not clear establishing a hardship it should go back to P&Z to establish specifically why this is a hardship. There isn't enough evidence to make it clear as to why it is a hardship. The process is hard to understand. In order to uphold the ordinance there has to

be substantial evidence and it isn't there. Chair states that to overturn the P&Z decision there has to be no evidence at all and I believe there is enough implied evidence that I wouldn't be comfortable reversing their decision without substituting our judgment with theirs. I don't think it's too much to ask the P&Z Commission to rehear the application to establish the facts.

The testimony shows that ordinance requirements were read by the administrator to the P&Z Commission during their hearing. The evidence of the following discussion by the members implies they are thinking about it but their decision does not clarify the existence of a hardship. Leach agreed that having it reheard would make it clear because the variance requirements have to be met.

There was discussion on the use of the easement for public right of way.

Clayne Tyler explained that the BOCC will have to make a motion to reverse the decision of P&Z Commission and to remand it back to the P&Z Commission for a hearing to define the specific reasons for granting a variance based on undue hardship.

Chair reviewed the process he went through to make a decision today. The review of evidence and the appellant's statements that the variance makes a hardship on the Shinn's is a concern. He reviewed the case law of Blaha v. Ada County Commissioners.

Chair made the motion to reverse the P&Z decision on the Variance and to remand it back to P&Z to be reheard at a public hearing with specific instructions to review and identify whether or not there is undue hardship as required by the county ordinance. Commissioner Leach seconded the motion. Then he asked if the question needs to be addressed to the easement and its intent. The appeal covers the question of granting a variance to not dedicate the easement as public right of way. The question was raised as to the language of the easement and whether it is adequate as varied for access to a subdivision. Is this a point for the BOCC to address? It is part of the appeal. How does P&Z decide on the easement? What does an easement allow or disallow? Tyler explained that there are two things to consider in whether it allows public use or not. The bare language of the easement document and the intent of that language and how you define it has to be reviewed.

Clayne Tyler said that it is not up to BOCC to determine what an easement does and does not allow. It is out of the scope of action for this Board as it sits in quasi judicial capacity in determining the appeal of this variance. This particular easement was a perpetual non exclusive easement that said it's not to be used for public right of way. Part of the variance application is to vary the ordinance from dedicating the access road as public right of way.

There is an issue to the language of the easement for use of the road as a public road. That is a decision for the courts on interpreting the intent of the easement. Tyler advised that this is outside the scope of the zoning ordinance and would have to be taken for review by the courts. Chair stated he had questioned the public road language in the easement for a difference between a public road and a private road that accesses multiple home sites. There was discussion on the explanation of private vs. public road. Chair asked if that question also should be sent back to P&Z. Also, should the entire question be remanded back or just a portion of it? Tyler offers that the motion can remand the question of undue

hardship by itself and uphold the variance of the public right of way or remand both. The P&Z decision on the right way had adequate discussion and is pretty specific to use. Chair states that the motion was to remand the decision on the undue hardship and define that, lets vote on that part of it.

The motion was restated by Chair Ebert, It was moved and seconded to overturn Planning and Zoning to remand the issue of undue hardship back to P&Z with specific instructions to focus and clearly define whether or not it is an undue hardship in order to grant a variance, Chair called for vote: Leach voted yes, Chair voted yes; motion carried and passed.

Garry Jones, Attorney for Shinn's asked if he could confer with Mr. Tyler. Clayne Tyler explained that the motion needs to be amended on the appeal, to seek support of the hardship. (Recess was called by Chair Ebert to allow for Tyler and Garry Jones to leave the session for a discussion).

Clayne Tyler advised that Mr. Jones issued a question about appealing beyond this stage; if there is a final decision on one portion and not all of it then he has varying appeal times. Some starts now right now and some later if he chooses to appeal. He further explained that Mr. Jones suggested the Board reserve ruling on the issue of the easement pending final decision by P&Z on the finding of undue hardship. Presuming the P&Z decision comes back granting the variance and defining the hardship or not granting the variance places the decision under the BOCC. Then the Board at that time can issue a final decision on all the points. Then everything is consolidated for one time frame.

Chair asked for explanation for the matter if no appeal comes on the variance and the timeframe. Tyler is presuming there is an appeal coming; after forty two days from entry whatever that decision is from P&Z the BOCC can make a final decision on that language of the easement. It will be cleaner to make one decision at that time.

Chair made the motion to reserve the judgment of every other matter contained in this appeal except the undue hardship question that is remanded back to the P&Z Commission. Commissioner Leach seconded motion; vote, aye, aye, motion carried and passed. This concluded the deliberation process.

There was discussion on the rehearing on the specific establishment of what hardship would it be for the applicant to meet the ordinance requirements. Administrator Kaufman asked when this item would need to be agendaed for the P&Z hearing for the variance application so she can set the hearing to allow for publication for notice of hearing. Clayne Tyler advised that she needs to follow the normal process for P&Z applications. Chair advised that it would have to be heard in August.

The subject of the written findings was reviewed and the official record has to have the facts for the reasoning for grant the decisions. Clayne Tyler reviewed the standards for establishing the finding of facts of the P&Z decisions.

Sheriff Goetz provided a report from the department. The hauling of the trucks from Fort Lewis will be put off for a week. S&S will put the hauling of the cardboard off for a week and the backhaul will happen a week later. The hauler had an equipment breakdown and has to

spend this week on last week's hauls in order to get caught up. There is problem with one key to a truck and this will give them time to work on finding a key.

Sheriff Goetz presented the request for Title funds from the 2009 Authorization of Secure Rural Schools for the purpose of reimbursement of funds spent on Search and Rescue activities on federally owned lands. The request broke out the costs for deputies, costs of labor and materials for three searches. Sheriff asked for approval for a prepay on the Back Country Medics helicopter expenses.

Chair read the three Search and Rescue incidents on the Federal lands for a total of \$14,718.80 reimbursement. There is a portion will be billed to Idaho County Title III funds for the searches that go over the county line. The Sheriff expended work that is entitled for the Title III funds. The helicopter expense will be paid now by CC Title III funds. ~~The money from Idaho County if it~~

Chair made the motion to pay the claim on the Sheriff's request for all the searches since they fit the requirements of Title III funds under the guidelines set forth in the 2009 Secure Rural Schools funding; Commissioner Leach seconded motion, all voted yes, motion passed unanimously.

Commissioner Galloway made the motion to prepay the Back Country Medics costs for \$7,148.43 for the search by helicopter for a missing child, Commissioner Leach seconded motion, and all voted yes, motion passed unanimously.

The Sheriff's office lost one patrol vehicle, one Dodge Durango was towed in for a lost radiator. The vehicle needs to be replaced. Sheriff asked to reopen the budget to spend line item for ½ vehicle for the County's share on Weippe Deputy vehicle. The vehicle money was budgeted and not expended, Sheriff proposes to order a vehicle, purchase it this fiscal year with that line item plus the use of reimbursement funds. There are reimbursement funds already in the budget that can be used. Then he will purchase a vehicle this year and budget one less vehicle for the next fiscal year budget. The Durango needs to be traded off.

The Driver's License department has upgraded equipment to issue the new State Driver's License. The State implemented the new license for better protection from identity theft. By the end of this year all 44 counties will be issuing the new license.

The excess equipment auction was reviewed. The vehicles went for better prices, but the other equipment like the paver didn't go very high. The results were good the proceeds amount to approximately \$18,000.

A person dropped in to see what can be done for costs incurred on impounded vehicles because someone took it without approval by the owner. Sheriff Goetz asked the gentleman to go up stairs to talk with a Deputy about the issue.

Sheriff's office purchased a 2011 Dual Sport Motorcycle for the Back Country Deputy. The deputy licensed the motorcycle and has the motorcycle endorsement.

At 11:00 A.M., a motion was made by Commissioner Leach to hold an executive session to discuss personnel with Sheriff Goetz, seconded by Commissioner Galloway. Chair Ebert declared the Board to be in executive session as authorized by Idaho Code 67-2345(1) (b),

to consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code. Chair, Aye; Commissioner Leach, Aye; Commissioner Galloway, Aye; motion carried unanimous.

Clerk Bird reviewed the line item for the Coon Annex Building Maintenance line. The balance of the line item has been spent down to \$1,663.93 for the remainder of this fiscal year. The will be approximately \$1200 available from the rent of the Headstart Building. The line item needs to be increased for the next fiscal year. A line item will be established in Building and Grounds Budget for Coon Annex Building Maintenance. The rent line item was discussed with starting at \$1200 a month for 12 months. A line will have to be created in Building and Grounds for the rent for revenue and expenses. If they are both placed into Current Expense-Building and Grounds then if one runs out a transfer can be completed.

The excess file cabinets in the court office can be moved down to the Commissioner's storage room. Once they are empty of the court files then the file cabinets will be utilized by Commissioner's records. This will create space so that John Leonard can start building the shelf units for the court office.

Clerk Bird asked for a policy on part time longevity raises. The departments each do their own thing. A standard policy needs to be established. The idea of not paying longevity for temporary part time was discussed. The instance of giving longevity for a permanent part time employee can be issued. The longevity of Commissioners' employees is a question before the Board now. Commissioner Leach asked for clarification. The establishment of the temporary part time employees or permanent part time employees needs to be done so it's part of the County policy manual. It needs to be set so that it is established. Commissioner Leach asked if the permanent part time should be consistent and established that could qualify for a longevity raise. The Board could set the criteria that the permanent part time person has to work regularly for six months. The funding of longevity raises is based on the assumption that there is money to fund it. The idea needs to be discussed further.

Treasurer Dawn Erlewine, Eric Peterson and Cheryl Mast POA for Ronald "Torkel" Tweite are in for further discussion of the delinquent property taxes. The BOCC gave a tax extension for taxes on 2007 taxes owing by Mr. Tweite. The total of \$3100 is owed on 2007 taxes. Since 2003 Mr. Tweite has only been paying the most delinquent taxes. The extension deadline was not met therefore kicking it back into pending tax deed for the past three years.

Ms. Mast notified the County that they couldn't meet the June 20th deadline. Mr. Tweite suffered a difficult medical emergency leaving him incapacitated. He has a court appointed POA to deal with his estate. The Tri-State Hospital has been in charge of his care and has filed on his behalf for Disability Social Security. Tweite is under 24/7 long term care under the hospital. Tri-State has an agreement and could move the patient to the Nursing Home for long term care. The costs to date are over \$380,000 bills in medical bills incurred to Tri-State; then the monthly costs to nursing home are approximately \$10,000 a month. Social Security initially denied because of not enough quarters of work for Social Security was paid

in. The person has to be defined a disabled by Social Security standards. Medicaid program sets their decisions on the based Social Security Disability.

Mr. Tweite has property from an inherited trust. Mr. Tweite is totally disabled. Mr. Peterson was hired by Tri-State to facilitate the handling of the establishment of the disability. Mr. Peterson has been providing Medicaid financial information for establishing disability.

The tax arrangement was made with the County before the Medicaid process was started. The income from rental properties doesn't meet the financial obligations of the trust. The properties are up for sale. The taxes are part of the financial obligations. There is a for sale listing on both properties. Once he can get listed on Medicaid those medical costs can be met.

The property can't be sold with the County taxes being a lien. The property sale may not meet all the debt. The delinquent taxes may not get paid from the estate. The property has to be sold for fair market value. The property is listed for sale at market value. The full taxes owing at this time are \$17,818.41. plus fees, penalties and interest. The Tri-State Hospital attorney is David Gittins and he asked to keep the taxes current.

The Treasurer states that she is out of compliance with Idaho Code since the taxes are now owed for 4 years. The County made the effort to help by offering an extension on the 2007 taxes last December. The sale of the property is necessary. If the hospital picks up the taxes for 2007 and 2008 to keep it from going to tax deed sale they will probably step in to protect their Deed of Trust.

Eric Peterson stated it's a complicated scenario. The Treasurer advised that the notice of pending tax issue will have to proceed for 2008. If the payments aren't made on the taxes as long as the attempt is made. Mr. Peterson asked if the Board has the authority to extend again on the delinquent taxes. He can't promise the payments.

Chair Ebert, said that the extension was given and the taxes weren't paid because lack of funds. The County wants to protect their interests and is cognizant of the interests of Mr. Tweite and the hospitals. Chair asked why the County wouldn't have Tri-State pay the 2007 and 2008.

The 2007 and 2008 delinquent taxes have to be dealt with to stop the pending tax issues. The patient is almost indigent. How will that play into the indigence code? If Medicaid doesn't cover then the indigence code comes into play. After all estate is gone would the indigence code come into play? Chair said that the County gives a cancellation of taxes for hardship.

The Board has to start the process on the delinquent taxes for 2007 and 2008. The guidance for Board on the tax issues is almost non existence.

Chair suggested that the pending tax deed notice for 2007, 2008, 2009 and 2010 starts the clock ticking for the statutory requirements. The code requirements to stop the notice of pending tax issues would have up until December 20th for 2007 and 2008 plus penalties and interest. Tri-State can have until December if they choose to pay the delinquent taxes. Chair stated that the County starts the pending tax deed process. Peterson has to show he is working on the tax issue for protection of Tweite's interest.

Chair states that the County could be facing the indigent claim eventually. This is a hard issue. The ID Code 56-218 for State Medicaid vendor was discussed.

Does the County want to go to pending tax deed? The Treasurer does not have to have the BOCC approval to start the tax deed process because of the statutory requirements. The BOCC has the right to extend taxes. The process has to be started before the Board can give the extension again. The consensus is to start the pending tax deed process; it sets deadlines and allows BOCC to make decisions.

The apartments are rented currently but not enough is coming for paying the bills. The two houses are rentals also, one is now vacant. Medicaid asked for verification of Torkel Tweite's income for the last 6 months. He is totally incapacitated. The County recognizes that Mr. Peterson has effectively advocated for Mr. Tweite to protect their interests.

Commissioner Galloway left the session at 1 PM.

IT/Networking/Re-addressing report was reviewed with Angela Vander Pas. She received another road name request. A road name list indicating where the road is located and starts is needed for the different departments and the public services. Ms. Vander Pas will put the information on the webpage.

The new request is a road off the Gold Wagon Road in the Schilling subdivision. The road names were contingent on the roads being built. The road goes to the landowner's property and could connect to some of the Jackson Estates property. The request is for Cozy Creek Drive or Salt Lick Driver. The consensus is to approve Cozy Creek Drive.

Ms. Vander Pas asked for an estimate for payroll in E-911 from Clerk Bird. To finish the E-911 audit it will cost approximately \$3100 for payroll to finish the end of the year.

Ms. Vander Pas explained that the President of U Of I will meet with the State GIS officials. She will attend the meeting to represent Region II on a statewide establishment of GIS center.

The Title Company asked for a meeting to discuss the placement of a server with the County's to allow access for E-recording from a remote site.

Paul Pippenger met with the BOCC for discussion on the lot behind the Road and Bridge Shop. There was previous discussion on the concept of the lot line adjustment for correcting the existing building location. A portion of Mr. Pippenger's storage is over onto the shop lot. A lot line adjustment is necessary to correct the error and provide a setback from the property line. There was discussion on the price of a lot. A survey map of the lot line was reviewed. The price per square foot needs to be negotiated. This is not a creation of new lot; it's just a lot line adjustment.

A fair market appraisal is necessary to determine fair market value to estimate the value of the lot from an appraiser of real property. The County has an appraisal from the purchase of the road and bridge shop and lot. The value of bare land with no improvements is what is necessary. An appraisal will be completed by the bank's commercial appraiser. The Board has to declare an odd lot by resolution, set square footage price and publish notice of intent

to sale county property. Clayne Tyler suggested identifying the set back. Sell Pippenger property two or three feet from the setback.

The County has large rocks stored at behind the fair barns. Paul Pippenger asked to purchase the rocks from the County to place as rip rap shoring up the bank in the RV Park where the river eroded it. The consensus is to sell the rocks. The rocks are located on the railroad right of way.

The new easement for the access road for the Ambulance Building was reviewed. The existing easement places the road 15 feet from the lot line. The fire hydrant was inspected by the Public Works official and it only requires some dirt work. The existing easement will be abandoned and a new one created. The easement is granted to the County Ambulance District. This is just straightening out the easement lines. There won't be any change in the access point.

Mr. Pippenger asked if the County is willing to sell the lot by the old shop building. The property could be declared odd lot. The odd lot could be declared to sell to adjacent land owner. The odd lot has to be market value. Discussion was held on the value or an exchange for building a replacement up near the Marine Building. Mr. Pippenger will give the Board a square foot price on a 5000 square foot building.

Rob Simon reported that he was meeting with FEMA at this time. What is the status for heavy hauling on Upper Fords Creek Road? Simon inspected the road, it's drying out, but there isn't any hauling on it. The consensus is to open the road to heavy hauling and Simon will keep monitoring it.

The rock crushing will start this week up at Winter's Creek. A sample will be pulled this week before he starts in the morning. A test sample will be sent to All Tests.

Chair made the motion to move a part time employee to full time for the Transfer Station. Commissioner Leach seconded, both voted yes, motion passed unanimously.

Hanson's Garage could not order a Dodge Dakota pickup. They cannot get one ordered with the bid assist. They can order another pickup for \$25,500. A full size F-150 quote came in near the same price. There is a used pick-up on the lot for approximately \$15,565 with 31,000 miles on it. The new models will cost more and will be different which may take several months.

Dave Smith offered two quotes for two comparable pickups for slightly less money than at Hanson's Garage. Hanson stated that they won't work on the vehicle if purchased from Dave Smith Motors. The consensus is to wait to order at this time.

Simon worked with the FEMA today to tie work to mileposts on the roads for their estimates. The Huckleberry Bridge Road and Harmony Heights Loop Road repairs will need to be negotiated.

The road to CVH has potholes that need to be repaired; they need fixed since it benefits all the citizens. The Board discussed who provides the road repairs.

A resolution was signed by the BOCC for initiated a cooperative agreement with the federal, state agencies on land use actions. The consensus is to have an open dialogue in the land use management. The Federal agencies are listed in the comp plan as having to give notice to the County on their management acts.

Approve/Deny/Sign: The transfer of funds for the E-911 Budget to transfer funds to cover the payout of payroll that should have been charged to Data.

Chair made the motion to sign Resolution No 11-06-13 for transfer of funds in the E-911 Budget. The resolution is to transfer from the "B" budget to "A" budget for salaries.

Commissioner Leach seconded motion; both voted in favor, motion passed unanimously.

**RESOLUTION No. 11-06-13
THE BOARD OF COUNTY COMMISSIONERS
CLEARWATER COUNTY, IDAHO**

WHEREAS, on August 30, 2010, the Clearwater County Commissioners adopted the 2010-2011 fiscal year budget for Clearwater County, and

WHEREAS, there were funds budgeted in the 2010-2011 budget for the E911 payroll and benefits;

WHEREAS, it was determined by the commissioners that there has been unanticipated costs for E911 payroll to and benefits lines to complete the E911 rural addressing as was anticipated for this fiscal year.

WHEREAS, it has been determined that Seven Thousand Ten Dollars (\$7,010.00) is needed to cover the unanticipated costs for rural addressing for the E911 payroll and benefits lines and should be transferred from the E 911 B Budget to the E 911 A Salary Budget and the E911 D Benefits Budget for additional payroll costs for unanticipated costs for rural addressing.

WHEREAS, there are sufficient funds in the E911 B budget to cover the Seven Thousand Ten Dollar (\$7,010.00) amount needed for this unanticipated costs.

WHEREAS, the funds should be transferred as indicated below:

E911	21-00-792	B- Budget	- \$7,010.00
E911	21-00-406	A- Budget	+\$6,112.00
E911	21-00-410	D-Budget	+ 344.00
E911	21-00-411	D-Budget	+ 531.00
E911	21-00-415	D-Budget	+ 23.00
			<u>\$ 7,010.00</u>

NOW, THEREFORE, on motion duly made, seconded and unanimously carried,

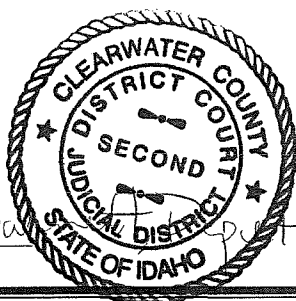
IT IS RESOLVED, that the Clearwater County Auditor is hereby directed to transfer the sum of Seven Thousand Ten 00/100 Dollars (\$7,010.00) from the E911 B budget Equipment line and distributed as follows to the following E911 A Budget Salary line and D Budget Benefit lines:

911	21-00-406 Salary	A- Budget	+\$6,112.00
E911	21-00-410 Retirement	D-Budget	+ 344.00
E911	21-00-411 Social Security	D-Budget	+ 531.00
E911	21-00-415 Unemployment	D-Budget	+ 23.00
			<u>\$ 7,010.00</u>

DATED and DONE this 27 day of June, 2011.

ATTEST:

Carrie Bird
Carrie Bird, Clerk



Don Ebert
Don Ebert, Chairman

Stan Leach
Stan Leach, Commissioner

absent
Carol Galloway, Commissioner

Treasurer Dawn Erlewine presented information on the taxes of Ronald Torkel Tweite for 2007, 2008, 2009 and 2010 taxes; the 2007 and 2008 will be paid from David Gittens for Tri-State Hospital.

The Bev Miller trailer issue was reviewed and the Assessor's office placed the value at zero since it was declared unlivable.

The County taxes collected are in the amount of \$900,000 for a total of \$2,636,061.92 taxes collected. The funds mostly came in during the last four days.

The County has accepted the Civil Probate with the appointment of Treasurer Dawn Erlewine Executor on the Irby estate. Clayne Tyler filed the papers with court and notified the State.

Alana Curtis, Juvenile Services provided an update on the department. The MOU for CIP/REP and CHMP funds with Idaho Juvenile Justice Commission for parenting, families and community resources for juvenile offenders for reintegration was reviewed. Ms. Curtis is agreeing to supervise the juveniles to make sure they attend court ordered meetings.

Chair made the motion to sign the MOU with Idaho Juvenile Justice Commission, Commissioner Leach seconded motion, and both voted in favor, motion passed unanimously.

The State is sending only \$13,000 for juvenile corrections from the ATF funds. This will affect the budget for the department.

- They have items stored in the office that will need to be cleared out for a Misdemeanor Probation office. The items were moved out the office. There are some items that can be disposed of since they no longer use them. The items no longer used can be declared surplus. Commissioner Leach suggested that he will look at the storage areas around the building.

There was discussion on the security cameras. The placement was reviewed. The consensus is that the cameras are not for the public viewing, it is only for service.

The security cameras will stay in place for now. The only issue is when Change Point uses the meeting room for sessions.

The Misdemeanor Probation Officer was discussed with Clerk Bird, Alana Curtis and Judge Randy Robinson. The position can be supervised by Alana Curtis and they will provide an office and computer. The computer will have to have remote access for the person to access the ISTARs. The job description was reviewed. The position may be advertized in August for start in the next fiscal year.

Some interested parties have contacted Ms. Curtis on the part time position. This could be advertized at Job Service in August. The probation officer will need to have a vehicle to meet with clients. It will run at odd hours. The Ford Taurus is being used by the Sheriff's office. It may be able to share with probation. The person would have to use their personnel vehicle at first. The County will pay mileage.

The POST training will be researched further. The position should be advertized at 19 hours. The budget is set on the amount getting from the State. The budget was reviewed.

The case numbers fluctuate throughout the year. If the phone is added to Juvenile Services it will on cost approximately \$10 a month.

Chair suggested advertising for just 15 hours instead of the 19 hours. Ms. Curtis feels more time is needed at the start to allow for training. List it as part time of less than 19 hours. When someone is placed on probation there will be conditions. Some may just have minor monitoring for class attendance. The misdemeanor probation will be working on the whole picture.

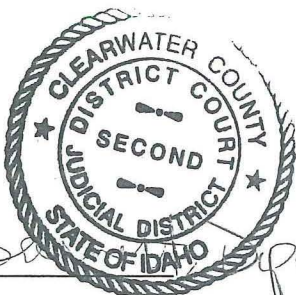
Judge Robinson states that in the beginning the probation officer will take the most time learning the process. There is a part of the probation information that is entered into ISTARS. There is a lot of computer entry and paperwork. There is anymore Alcohol Treatment monies released to counties unless the county has Misdemeanor Probation. There will have to be two people able to do the assessment. This will access those funds.

Ms. Curtis will learn the program first. Clerk Bird suggested starting the remote access on ISTARS. This should be set up with Ms. Vander Pas and the State officer to get it set up. There will be access on the court floor to ISTARS if needed in the meantime.

Julie Cottrell from the Supreme Court will be here for training. She may be able to help with the set up. Judge Robinson suggested talking with another county that only has a part time Misdemeanor Probation.

At 5:15 P.M. the Board adjourned until July 5, 2011.

ATTEST:



Carrie Bird
Carrie Bird, Clerk

Don Ebert
Don Ebert, Chairman

STATE OF IDAHO
County of Clearwater

I hereby certify that the foregoing is a full, true and correct copy of an instrument as the same now remains on file and of record in my office. WITNESS my hand and official seal hereto affixed.

this 26th day of June A.D. 20 12.
CARRIE BIRD, CLERK OF THE DISTRICT
COURT EX-OFFICIO AUDITOR & RECORDER

By Deputy Cindy Barnett



E. CLAYNE TYLER, ISBN 5277
Clearwater County Prosecuting Attorney
P.O. Box 2627
Orofino, ID 83544
Telephone: 208-476-5611
Fax: 208-476-4642

Deputy: LORI GILMORE, ISBN 5877

CARRIE BIRD
CLERK - DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

2012 JUL 3 AM 9 52 ✓

CASE NO. CV2011-500

BY RD DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)
ZV2011-2)

EDWARD L. SHINN and)
DONILEE E. SHINN, husband and wife,)

Petitioners,)

BOARD OF COUNTY COMMISSIONERS)
OF CLEARWATER COUNTY, IDAHO,)

Respondent.)

CASE NO: CV2011-500

RESPONDENT'S REPLY BRIEF

Petitioners have appealed the variance granted by Clearwater County to Ed and Carole Galloway, identified as ZV2011-2.

PRIOR PROCEEDINGS:

On May 23, 2006, Ed and Carole Galloway (hereinafter Galloway) filed an application to subdivide a parcel of property of approximately 99.82 acres (100 acre aliquot part parcel) into 10 parcels ranging between 6 plus acres and 12 plus acres in size. The applicants utilized the Class B combined plat procedure identified in the Clearwater County Subdivision Ordinance. The subdivision was eventually identified as Southfork Estates.¹

¹ Transcript of Prior Proceedings, Tab 16, page 1.

RESPONDENT'S REPLY BRIEF -1

Galloway, on January 11, 2011, filed an application for three variances from the Clearwater County Subdivision Ordinance. Galloway sought to vary the requirement of Clearwater County Subdivision Ordinance Article 4.D.2, which requires access roads to be built within a minimum sixty (60) foot wide right-of-way; to vary the requirements of Clearwater County Subdivision Ordinance Article 4.D.4.d, which requires access roads to have a minimum twenty-four (24) foot road surface or finished width; and to vary the requirement of Article 4.B of the Clearwater County Subdivision Ordinance, which requires all arterial, collector, and other streets in a proposed subdivision to be dedicated to the public.²

The Commission, following a disputed public hearing held on March 21, 2011, at which Galloway and Petitioners were present and provided evidence and testimony, granted Galloway each of the requested variances, documented by written findings of fact and conclusions of law, dated April 4, 2011.³

By Clearwater County Ordinance, the Planning and Zoning Commission has final authority to determine whether or not to grant a variance, and the ordinance requires no further **factual** public hearing in front of the Board of County Commissioners. Any appeal of that grant of variance must be made to the Board of County Commissioners, which hears the appeal as a quasi-judicial board.⁴

On March 25th, 2011 Petitioners filed a notice of appeal of those variance grants, challenging the Planning and Zoning Commissions findings and stating as grounds for appeal that:

No facts or testimony were presented which would authorize the issuances of a variance under the terms and conditions of the Clearwater County Subdivision Ordinance. Further, that the easement which the Galloways propose to use for access to the property does not allow that road to be utilized for easement for ingress and egress for parties other than Mr. And Mrs. Galloway. Finally, that it is not appropriate for a variance to be granted from the requirement that access to the subdivision be dedicated for public use.⁵

² Transcript of Prior Proceedings, Tab 4, pages 1 - 4

³ Transcript of Prior Proceedings, Tab 15, pages 1 - 5

⁴ Clearwater County Subdivision Ordinance, Article VII, Section A; Article IX, Section G.

⁵ Transcript of Prior Proceedings, Tab 1, pages 5 - 6

However, at the appeal hearing, Petitioners specifically limited their appeal to the issues of whether or not an undue hardship existed; whether or not sufficient evidence of an undue hardship were present in the record to justify the Planning and Zoning decision; and whether the easement held by Galloway prohibited subdivision of the property by the terms of the easement itself.⁶

The Clearwater County Board of Commissioners, sitting as a quasi judicial board, heard the appeal and issued an order remanding the matter to the Planning and Zoning Commission for further findings pursuant to a written order dated July 29th, 2011.⁷ Focusing on the sole issue as narrowed by the Petitioners at argument with the Board, the Board requested the Commission consider the following:

1. Are there are special circumstances or conditions affecting the property that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable;
2. Are those special circumstances such that failure to grant a variance would cause an undue hardship to the developer; and
3. Would strict compliance with the requirements of the Ordinance result in inhibiting the achievement of the objectives of the Ordinance, or nullify the purpose of the Ordinance or the Comprehensive Plan?

The Commission held a subsequent public hearing on August 15, 2011, took additional testimony and evidence, and granted the requested variances a second time pursuant to a written decision setting forth the applicable law and findings of fact, dated Sept. 6, 2011.⁸ Appellants filed a second notice of appeal dated August 31, 2011, appealing the decision of the Commission to the Board of County Commissioners. As grounds for appeal, the appellants argue:

⁶ See augmented record - minutes of proceedings as well as Board of Commissioners Decision dated July 29, 2011 found at Tab 16, page 4 - "At argument, Counsel for the Shinns argued that the Commission had no facts presented to it which would justify the Commission's finding that item 1 above [referring to undue hardship] exists. Counsel focused argument on item 1 but did argue that the variance would potentially nullify the interest and purpose of the Ordinance."

⁷ Transcript of Prior Proceedings, Tab 16, pages 1 - 5.

⁸ Transcript of Prior Proceedings, Tab 15, pages 6 - 13

1. The applicant, Galloway, presented insufficient evidence to authorize the issuance of a variance; and that
2. Any undue hardship was of Galloway's own making, because the property was purchased in 1985, when the existing standards were in place, and hardship of the applicant's own making cannot be the grounds for the granting of a variance.

A third issue raised in the appellant's first notice of appeal (which was held by the Board of County Commissioners pending remand to the Commission), that the access easement itself does not allow for subdivision of the Galloway property at all, is finalized herein as well.⁹

Appellants further re-assert as grounds for appeal that it is not appropriate for a variance to be granted from the requirement that the access road be dedicated for public use.

The Board of County Commissioners, following a hearing, denied the second appeal and filed a written decision, dated November 11, 2011.¹⁰ The Board then finally granted approval of the subdivision plat, by written order, dated December 19, 2011.¹¹

STANDARD OF REVIEW:

The Clearwater County Board of Commissioners, sitting as a quasi-judicial appellate board, has already heard the appeal of the petitioners twice, and issued written opinions thereon. In a judicial review of those opinions, the Court is instructed to apply the following standards:

I.C. § 67-5279 provides the primary guidance to Courts when hearing judicial review petitions from County planning and zoning decisions. It provides as follows:

- (1) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.
- (2) When the agency was not required by the provisions of this chapter or by other provisions of law to base its action exclusively on a record, the court shall affirm the agency action unless the court finds that the action was:
 - (a) in violation of constitutional or statutory provisions;

⁹ Transcript of Proceedings, Tab 1.

¹⁰ Transcript of Proceedings, Tab 16, pages 10 - 18

¹¹ Transcript of Proceedings, Tab 16.

- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure; or
- (d) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.

Idaho Courts have provided further guidance [internal citations omitted]:

“The Idaho Administrative Procedures Act (IDAPA) governs the review of local administrative decisions... In an appeal from the decision of a district court acting in its appellate capacity under the IDAPA, this Court reviews the agency record independently of the district court's decision... **The Court does not substitute its judgment for that of the agency as to the weight of the evidence presented.** I.C. § 67-5279(1). **The Court instead defers to the agency's findings of fact unless they are clearly erroneous...In other words, the agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record.** Here, the Board is treated as an administrative agency for purposes of judicial review...The Court may overturn the Board's decision where the Board's findings: (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence in the record; or (e) are arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3). The party attacking the Board's decision must first illustrate that the Board erred in a manner specified in I.C. § 67-5279(3), and then that a substantial right has been prejudiced. If the Board's action is not affirmed, “it shall be set aside...and remanded for further proceedings as necessary.”* I.C. 67-5279(3).” (emphasis added)

Urrutia v. Blaine County, 134 Idaho 353, 357, 2 P.3d 738, 742 (2000).

“The Court defers to the agency's findings of fact unless they are clearly erroneous and the agency's factual determinations are binding on the reviewing court, even when there is conflicting evidence before the agency, so long as the determinations are supported by

evidence in the record. *Payette River Prop. Owners Ass'n v. Bd. of Comm'rs of Valley County*, 132 Idaho 551, 554, 976 P.2d 477, 480 (1999). **Planning and zoning decisions are entitled to a strong presumption of validity, including the agency's application and interpretation of its own zoning ordinances.** *Cowan*, 143 Idaho at 508, 148 P.3d at 1254.” (emphasis added)

Neighbors for a Healthy Gold Fork v. Valley County, 145 Idaho 121, 126, 176 P.3d 126, 131 (2007)

ISSUES PRESENTED:

Petitioners now seek judicial review of the Clearwater County Planning and Zoning grant of the requested variances to Galloway, arguing the following issues:¹²

1. That no facts were presented which would justify the issuance of a variance under the regulations and conditions of the Clearwater County Subdivision Ordinance;
2. That the easement that Galloway proposes to use for access to the property does not allow that the road be utilized for easement for ingress and egress by parties other than the Galloway;
3. That it is not proper for a variance to be granted from the requirement that access to the subdivision be dedicated to the public; and
4. That there is no justification for a variance to be granted from the subdivision requirement that access to the subdivision be dedicated for public use.

LAW AND ORDINANCES THAT VARY THE REQUIREMENTS OF A SUBDIVISION ORDINANCE:

Title 67-6501 et. seq. (the Local Land Use Planning Act, or LLUPA) is the primary delegation of land use planning and regulation to the Counties. The Idaho Court of Appeals, in **Worley Hwy. Dist. vs. Kootenai County**, 104 Idaho 833, 663 P.2d 1135 (Ct. App. 1983), succinctly summarized this delegation of the police power as follows: “In enacting the Local Planning Act of 1975, the legislature intended to give local governing boards broad powers in the area of planning and zoning.”

I.C. §67-6511 provides a mandate that each county establish zoning districts, setting

¹² Petition for Judicial Review, page 6.

regulations for construction standards or use of buildings, lot occupancy, size of lots, open spaces, and other uses. In addition, I.C. §67-6513 requires each county to provide by ordinance standards and processes for applications for subdivision permits. At issue here are applications for subdivision permits and variances from those requirements.

There is a distinct difference between zoning and subdivisions. Both Idaho statutes and Clearwater County ordinances deal with them separately (zoning ordinances are found in Ordinance 35B, subdivision ordinances are found in Ordinance 34). This distinction is important because the Idaho Code provision (I.C. §67-6516) that the petitioner claims is in conflict with the Clearwater County subdivision ordinances **applies to zoning only**, not subdivisions. It provides: “Each governing board shall provide, as part of the zoning ordinance, for the processing of applications for variance permits ...” I.C. §67-6516. At issue here is a subdivision application, not a zoning issue.

For example, a similar argument was made in **Blaha v. Bd. of Ada County Com'rs**, 134 Idaho 770, 774, 9 P.3d 1236, 1240 (2000), in which the petitioners argued that Ada County had no authority to grant a variance to road width, placement and design issues because those were outside the scope of I.C. §67-6516. The Court held:

As defined in the Local Land Use Planning Act, a variance is a modification of the bulk and placement requirements of the zoning ordinance as to lot configuration or building size and location. I.C. § 67–6516. The variances to intersection design, road width and grade specifications, which are involved here but not itemized in the statute, are therefore not governed by the standards found in I.C. §67–6516.

Blaha, at 774. Although this holding was ultimately not necessary for the Court finding in **Blaha**, it certainly provides direction for this Court in this case.¹³

In short, Idaho counties are required to provide ordinances establishing standards for subdivisions (I.C. §67-6513). Implicit in this authority to establish standards is the authority to establish a procedure to vary those standards. That procedure is not the procedure set out in I.C. §67-6516, which applies only to zoning issues. Thus, Idaho counties have authority to establish their own variance procedures for subdivisions.

¹³ The *Blaha* court ultimately found the variance was unnecessary because Ada County Highway District standards already provide the same authorization as the variances, and that those standards were controlling.

Clearwater County has done so. The applicable Clearwater County **subdivision** ordinances (hereinafter referred to as CCSO) are as follows:

1. CCSO Article IV § D.2 requires an access road have a sixty (60) foot right-of-way.
2. CCSO Article IV § D.4.d requires that the minimum surfaced or finished width for a street or access road be twenty-four (24) feet.
3. CCSO Article IV § B requires that all streets be dedicated to public use.
4. CCSO Article VIII sets for the criteria for granting a variance. It provides specifically as follows:

Section A. Purpose: The Commission may grant, as a result of unique circumstances such as topographical-physical limitations or a planned unit development, a variance, as herein defined, from the provisions of this Ordinance on a finding that undue hardship results from the strict compliance with specific provisions of requirements of this Ordinance or that the application of such requirements or provision is impracticable.

Section B. Findings: No variance, as herein defined, shall be favorably acted upon by the Commission unless there is a finding, as a result of a public hearing, that all of the following exist:

1. That there are such special circumstances or conditions affecting the property that the strict application of the provisions of this Ordinance would clearly be impracticable or unreasonable and cause an undue hardship.
2. That strict compliance with the requirements of the Ordinance would result in extraordinary topography, or such other conditions would result in inhibiting the achievement of the objectives of the Ordinance.
3. That the granting of the specified variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated.
4. That such variance will not violate the provisions of the Idaho Code.
5. That such variance will not have the effect of nullifying the interest and purpose of this Ordinance and the Comprehensive Plan.

Undue hardship, as contemplated by the Clearwater County Subdivision Ordinance, is not defined either in the Ordinance or in the Idaho Code. There exists limited guidance in State

RESPONDENT'S REPLY BRIEF -8

law, and that guidance is provided generally within the context of variances from **zoning** decisions rather than subdivisions. Ultimately, this Court is instructed to provide planning and zoning decisions a strong presumption of validity, **including the agency's application and interpretation of its own zoning ordinances** (Neighbors for a Healthy Gold Fork v. Valley County (supra)).

Thus, what constitutes an undue hardship depends on how the Planning and Zoning Commission and the Board of County Commissioners interprets that term, rather than how Courts interpret that term, and so long as the County's decision is reasonable and based in fact, it cannot be reversed on these grounds.

However, the case law that exists was carefully considered by the Planning and Zoning Commission when seeking a rational basis to determine the meaning of the term. Of note, the Planning and Zoning Commission issued an order granting the requested variances. The Board of Commissioners remanded the matter back to Planning and Zoning on administrative appeal with guidance in the form of specific questions to the Planning and Zoning Commission, including the question of "undue hardship."

The law reviewed by Planning and Zoning is found in the Order by the Clearwater County Board of Commissioners remanding the issue to Planning and Zoning ¹⁴, and further reviewed in the Decision of the Clearwater County Board of Commissioners on appeal after remand, upholding the Planning and Zoning Commission's grant of variance ¹⁵. It is set forth in full below:

"The requirement to show an "undue hardship" exists in State statute as well (I.C. 67-5279). There exists limited guidance from state of Idaho statutes or case law as to what constitutes an "undue hardship". Undue hardship is some condition which is analyzed on a case by case basis (*Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009) due to characteristics of the site (*Wohrle* at 147 Idaho 273-274; 207 P.3d 1004-05), or due to special circumstances or conditions, which are peculiar to the property and not applicable generally to land or buildings in the neighborhood (*Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 909, 693 P.2d 1108, 1111 (Idaho App., 1984), and which is not in conflict with the public interest. I.C. § 67-5279. An undue hardship can be created due to exorbitant expense of a requirement not justified

¹⁴ Transcript of Proceedings, Tab 16, Page 6.

¹⁵ Transcript of Proceedings, Tab 16, Page 12 - 16

by the development, such as with respect to excessive road construction requirements to support a relatively few number of daily vehicle trips caused by the development (see *Blaha v. Board of Ada County Com'rs*, 134 Idaho 770, 773, 9 P.3d 1236, 1239 (Idaho 2000) for a Board of County Commissioners finding of undue hardship due to an expense vs. benefit analysis, cited with approval by the reviewing court).”¹⁶

While many of the above cases dealt with zoning issues, rather than subdivision issues, one case (**Blaha**) dealt with not only subdivision issues, but road design and specifications. In *Blaha*, the developer sought a variance from Ada County relating to road design and construction, arguing that it was unduly restrictive to require extensive re-alignment and grading of a private road providing access to a proposed subdivision when the anticipated traffic would be only eighty trips per day. The developer had previously obtained a waiver of those requirements from the Ada County Highway District, and subsequently sought a variance from the Ada County Planning and Zoning Commission.

Specifically, the Ada County Board found (per **Blaha**):

“The Board found that access to the parcel proposed for development was by way of an existing private road which intersected the public road at a vertical curve exceeding current ACHD policy. The Board then determined that strict enforcement of ACHD policies would require extensive realignment and reconstruction of the public road, which was unreasonable and would create an undue hardship on the applicants not justified by a development generating only eighty vehicle trips per day. Because the ACHD had certified compliance with the standards outlined in its policy manual, as evidenced by a letter from Dave Szplett to E.C. Palmer dated November 7, 1996, the Board granted the variance with respect to the intersection design requirements.

With respect to the private road, the Board found that the proposal substantially complied with Eagle City Code § 9-3-2-5:B construction and design standards. The Board found that a twenty-foot road width would act to keep vehicle speeds low, safely accommodate the expected daily trips, and be more desirable than a twenty-four-foot road width, given the rural setting and low density of the proposed development. The Board noted that a twenty-foot road width satisfied the Ada County Code and concluded, in granting the variance, that the public interest would not be served by requiring the road to be paved to a width of twenty-four feet. *Blaha v. Bd. of Ada County Com'rs*, 134 Idaho 770, 773, 9 P.3d 1236, 1239 (2000)

The **Blaha** court ultimately found the petition for a variance to the County was unnecessary because the Ada County Highway District had primary authority to waive the road

¹⁶ Of note, the excerpt references I.C. §67-5279 in error, rather than I.C. §67-6516

design requirements and had done so prior to the variance being granted. Implicit in this finding is the conclusion that the cost and expense of road construction compared to the benefit to be gained from the road construction is a proper analysis.

Regardless, whether a cost/benefit analysis is appropriate in Clearwater County for a variance of a Clearwater County subdivision requirement is a determination to be made by Clearwater County, not the Court.

Of note, in this case Clearwater County, rather than a highway district, holds jurisdiction over the access road. If the Ada County Highway District can waive its road requirements, as in Blaha, it stands to reason that Clearwater County, as the entity with jurisdiction, can do so also.

The Clearwater County Planning and Zoning Commission and the Board of County Commissioners recognized this and adopted this rationale as a factor to be considered in an undue hardship analysis. Given the County's authority to interpret its own ordinances, and the deference that the court must paid to that interpretation, this interpretation is binding upon the Court in review of the County's decision.

ARGUMENT AND ANALYSIS:

The Petitioners first argue that the County's grant of the requested variances violates I.C. §67-6516. As discussed above, this statute is not applicable as it is specific to zoning, rather than subdivisions.¹⁷

Petitioners do not challenge the constitutional or statutory authority of Clearwater County to engage in subdivision planning, nor do Petitioners challenge the procedure that was utilized. Petitioner's arguments can be distilled to the single issue of:

“Were there sufficient facts presented to justify the Planning and Zoning decisions to grant the three requested variances”

- I. THE APPLICANT, GALLOWAY, PRESENTED SUFFICIENT EVIDENCE TO AUTHORIZE THE ISSUANCE OF THE REQUESTED VARIANCES.

¹⁷ Of note, I.C. §67-6516 and CCSO Article VIII are in many respects similar.

A. Petitioners first focus on the term “site” found in I.C. §67-6516, arguing that the term “site” means only the property being subdivided, and not easements providing access to the property; therefore, a variance cannot be applied to the access road.

As discussed above, I.C. §67-6516 does not apply to subdivisions, including requests for variances in subdivision ordinances. However, even if it did, this interpretation is in error. While no specific definition of “site” exists in Clearwater County Ordinance, it is clear from other contexts that access roads are to be considered part of the “site”. For example, a subdivision application requires a subdivision plat map identifying the property being subdivided together with access roads and easements, whether public or private, connecting that property to a public street.¹⁸ The definition of “map” includes access roads.¹⁹ Design standards for interior roads in a subdivision, as well as exterior access roads, are specified.²⁰ It is clear that the term “site”, if applied to a subdivision under the Clearwater County Subdivision scheme, includes access roads and easements.

The Clearwater County variance ordinance specific to subdivisions discusses applying variances “to the provisions of this Ordinance,” which means the entire subdivision ordinance, including those provisions specific to access roads. It also discusses the need for special circumstances or conditions “affecting the property” to exist prior to granting a variance.

At no point is the subdivision variance ordinance as narrowly construed as Petitioners argue.

B. Petitioners then argue that there is not a legally sufficient showing of undue hardship “peculiar to the site”.

The “site” clearly includes access roads, regardless of an assertion otherwise. That is the interpretation of Clearwater County, and that interpretation is both reasonable and is controlling (see Standard of Review above).

It is important to keep in mind the context of this case. We are not talking about a

¹⁸ Clearwater County Subdivision Ordinance Article III, Section I.

¹⁹ Clearwater County Subdivision Ordinance Article II, Definitions.

²⁰ Clearwater County Subdivision Ordinance Article 4, Section D

landowner wanting to use his property in violation of use restrictions. This is a case where Galloway wants to use their property for the exact same purpose as the Petitioners, i.e., for single-family residential purposes. At issue here is merely the access road from a public road (Middle Road) to the Galloway's property itself, and its width and nature (public vs. private).

The Planning and Zoning Commission found, pursuant to the order dated April 4, 2011, and the order dated September 6, 2011, that Galloway had presented sufficient evidence to authorize the issuance of the requested variances. It set forth the specific ordinances applicable to the requests, and found that those ordinances had been complied with. The Petitioners appealed the decision of April 4, 2011, specifically focusing their appeal on the issue of "undue hardship".²¹ Upon administrative appeal to the Board of County Commissioners, the Board remanded the matter to the P&Z Commission with a request to consider several questions, relating to specific elements of "undue hardship." In its decisions, the P&Z Commission correctly identified the applicable standards. It then found those standards to have been met, reciting facts to support that finding. Those facts appear of record, and are summarized (from the Clearwater County Board of Commissioners following administrative appeal) as follows:

"In this case, evidence to the Commission found the road as varied provided proper, safe access, that the easement necessary to support the road as varied was adequate, that obtaining a wider easement to comply with the ordinance was impossible, that dedicating that easement to the public was impossible due to the nature of the easement, and unnecessary in that there would likely be no further developments or subdivisions using the same road for access, and that the cost of construction, even if it were possible, to build a road which complied with the ordinance was unduly exorbitant [sic], especially in light of the 10 to 20 vehicle trips per day which is all that is anticipated for this low density very rural development at maximum housing capacity. The road as varied (easement, road width, public dedication) was deemed adequate by reviewing professionals including the Clearwater County Road Department and the Evergreen Fire District.

Failure to grant the requested variances would have the result in the inability to subdivide the real property into less than 20 acre parcels, without any control or jurisdiction over the road at all by Clearwater County, and with the possibility of more residences being in place and a higher traffic load than as currently proposed, due to the lack of controlling ordinances being in place for 20 acre or larger parcels.

²¹ Please see Shinn vs. Board of County Commissioners, Petition for Judicial Review, Page 5. Please also see Augmented Record - Audio Recording of Appeal

Thus, the public interest may actually be hurt by failure to grant the variances.

Galloway provided a letter which was read into the record which references each of the requirements for granting a variance, and provides grounds for finding in his favor on each of those requirements. The Clearwater County Planning and Zoning Administrator also prepared and submitted staff recommendations identifying the required findings, and addressing them, with a recommendation to grant the requested variances.

In prior proceedings, testimony was submitted from the Clearwater County Road and Bridge Department Supervisor, Rob Simon, indicating that the proposed private road access (the subject of the three variance requests) would be adequate for safe, year round travel, especially given the low density rural nature of the development. That information was provided again in the remand hearing of August 15th. (See Transcript pages 10 - 15).

Mr. Galloway followed up his written testimony with an oral statement, again discussing the cost, public benefit, low density rural nature of the proposed development. (See Transcript pages 43 - 50).

Petitioners first argue that an expense vs. benefit analysis in consideration of a request for a variance from subdivision requirements is inappropriate, arguing that City of Burley v. McCaslin Lumber Co., 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984) holds as such.

City of Burley does not apply to this situation. First, Burley considered a zoning variance rather than a subdivision variance. The property in Burley was zoned for only single or double residential use. The landowner wanted to remodel a building from a duplex to a triplex, a use not authorized in the particular zone in which the land was situated.

Here, Galloway seeks to subdivide the property into multiple ten-acre lots for residential purposes. This is a use of the property entirely permitted by the Clearwater County zoning ordinances. The subdivision ordinances of Clearwater County exist to ensure orderly development for authorized uses, not to establish which use is proper or improper.²²

Second, as Burley involved a zoning variance (as opposed to subdivision), the Burley court focused as the controlling law on I.C. §67-6516, stating:

The next question is whether the zoning board properly granted the variance for a triplex. Idaho Code § 67-6516 provides that a variance “may be granted ... only upon a showing of undue hardship *because of characteristics of the site* and that the variance is not in conflict

²² Clearwater County Subdivision Ordinance Article 1, Section C. Purpose.

with the public interest.” (emphasis added)

City of Burley v. McCaslin Lumber Co., 107 Idaho 906, 909, 693 P.2d 1108, 1111 (Ct. App. 1984). As the *Blaha* (supra) court established, I.C. §67-6516 does not apply to subdivision variance requests, only to zoning variance requests. The controlling ordinances then are those established by Clearwater County, as interpreted by Clearwater County, which applies a cost / benefit analysis as part of the process (not the exclusive analysis, but certainly part of it). Other language from the *Blaha* court, quoting an Ada County Planning and Zoning finding that the exorbitant cost of the road construction, compared to the small anticipated benefit, leads again to the conclusion that a cost / benefit analysis is appropriate **in the context of subdivision ordinances and roads.**

Regardless, the decision granting Galloway a variance for certain access road issues was not solely based on a cost/benefit analysis. The findings of fact of the P&Z Commission for both public hearings are found in the record at tab 10, and are not re-printed here.

It is clear that the P&Z Commission’s findings were not in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; not supported by substantial evidence on the record as a whole; or arbitrary, capricious, or an abuse of discretion. The grant of variances should be upheld.

II. GALLOWAY WAS NOT DISQUALIFIED FROM BEING ALLOWED A VARIANCE BECAUSE ANY EXISTING UNDUE HARDSHIP WAS NOT OF HIS OWN MAKING.

The Petitioners assert that any undue hardship which may exist is of the Galloway’s own making, and that self-created undue hardships cannot be grounds for granting a variance. Specifically, they argue that Galloway purchased the land in question in 1985, at a time when the existing ordinances were in effect; therefore, he caused his own hardship by purchasing land knowing development would require a variance.

Appellants point to **Dawson Enterprises, Inc. v. Blaine County**, 98 Idaho 506, 567 P.2d 1257 (1977) to support their position. *Dawson* does not apply to this situation, and furthermore *Dawson* does not hold that self-created undue hardships automatically mean that no variance can

be granted, but are a single factor to be considered. Most importantly, **Dawson** is a zoning variance case involving I.C. §67-6516 (discussed above). It is not applicable to the issue of a subdivision variance.

In **Dawson**, the applicant owned an **option to purchase** land zoned for agricultural and residential uses only. Dawson filed a request for a land use change (zoning change), seeking to have his parcel zoned as commercial for use as an automobile dealership. He then gambled on gaining the zoning change, exercised his purchase option, bought the land, and claimed (among other things) that an undue financial hardship would now arise if the zoning change was not allowed because the property would be worth far less than he paid for it unless it was zoned for commercial use. Specifically, the **Dawson** court held as follows:

Moreover, we cannot overlook the fact that Dawson's hardship in this case is self-inflicted since the option to purchase was exercised in full knowledge that the land was zoned residential and that a variance for commercial use had not been granted. As the Supreme Court of Colorado said, under similar circumstances: "Nopro's land investment was made in full knowledge of the zoning limitations. It took the calculated risk that it could break the zoning use barrier and thereby double the profit from its investment. Having been denied the means by which this might be accomplished, it claims hardship. If hardship exists under the facts of this case and we hold that it does not it was incurred voluntarily by the choice of Nopro and was self-inflicted." *Nopro Co. v. Town of Cherry Hills Village*, 180 Colo. 217, 504 P.2d 344, 349 (1973). In *Nopro*, as indicated, the developer was realizing a substantial profit on his investment and was complaining only that it could not make twice as much. *Manger v. City of Chicago*, 121 Ill.App.2d 358, 257 N.E.2d 473 (1970), was closer to the economic facts of this case in that plaintiff had actually put out cash for land that would be worth much less if the zoning variance was not granted. Nonetheless, the Illinois court reached the same conclusion: "Plaintiffs purchased the two parcels comprising the subject property with full knowledge of its zoning restrictions. While a party who purchases property in the face of the existing zoning classification is not precluded from challenging the validity of the zoning classification, his purchase in the face of the existing zoning classification is one factor to be considered. (Citation omitted.) Plaintiffs admit that they purchased the two parcels comprising the subject property with the intention of endeavoring to secure a change of zoning classification and described their plans as a 'calculated risk' in paying \$100,000.00 for what they knew to be the then true value of \$15,000.00." 257 N.E.2d at 479. Accordingly, the variance was denied.

Dawson Enterprises, Inc. v. Blaine County, 98 Idaho 506, 516, 567 P.2d 1257, 1267 (1977). **Dawson** presents facts very different from this case. First, **Dawson** is a zoning case, where the use being requested by the petitioner was not allowed. Unlike **Dawson**, the use

intended by Galloway has been allowed for well over thirty years, and was allowed at the time he purchased the property. Galloway requested a variance merely to change the road easement and width requirements incidental to an already allowed use.

Second, **Dawson** involves an analysis of “spot zoning”, something entirely absent from this case. Changing the land use for a specific parcel of land to something the entire neighborhood is not zoned for presents a very different question than obtaining a variance for a road easement and width to support an already authorized and allowed use. It raises the issue of spot zoning (improperly allowing a use of one parcel not allowed by the surrounding neighborhood and not consistent with the surrounding neighborhood’s character). Spot zoning is something the **Dawson** court spent significant time discussing. Of note, all cases citing **Dawson** involve spot zoning or requests for variances to change land use entirely, rather than variances for roads incidental to an already authorized land use.

Also, unlike **Dawson**, approximately twenty years elapsed before Galloway sought to subdivide their property. **Dawson** filed a request for a zoning change, and then purchased the property intentionally to create an undue hardship.

Of note, to argue that **Dawson** should be applied, even in a zoning context, to prohibit anyone who purchases property from seeking a variance twenty years later because any undue hardship that may exist was of their own making, would in effect mean no one would ever be able to obtain a variance. It would, effectively, invalidate the entire variance procedure both in Clearwater County ordinance and in State statute. That is an unreasonable result, and one even **Dawson** does not support (see **Dawson** citation with approval of the Illinois case **Manger v. City of Chicago**, 121 Ill.App.2d 358, 257 N.E.2d 473 (1970), holding that “While a party who purchases property in the face of the existing zoning classification is not precluded from challenging the validity of the zoning classification, his purchase in the face of the existing zoning classification is one factor to be considered. (Citation omitted.)” (supra).

Therefore, the Clearwater County Planning and Zoning Commission did not abuse its discretion when deciding to grant Galloway the requested variances, in spite of an argument of self-inflicted hardship.

III. SUFFICIENT EVIDENCE WAS PRESENTED REGARDING WHETHER THE RESPONDENT’S REPLY BRIEF -17

REQUESTED VARIANCES WOULD BE “INJURIOUS TO OTHER PROPERTY IN THE AREA”

Petitioners next argue that the P&Z Commission failed to include findings that the granting of the requested variances would not be injurious to other property owners in the area.

- A. Petitioners failed to exhaust their administrative remedies with respect to this issue. Any claimed defect at this point should be dismissed.

Pursuant to I.C. §67-5271, a person is not entitled to judicial review of an agency action until that person has exhausted all administrative remedies required in this chapter. A party must exhaust administrative remedies before resorting to the courts to challenge the validity of administrative acts. Landowners’ failure to exhaust administrative remedies deprived the district court of jurisdiction over their claim for declaratory relief. Regan v. Kootenai County, 140 Idaho 721, 100 P.3d 615 (2004).

At oral argument in front of the Board of County Commissioners, Petitioners specifically limited their appeal to the issue of “undue hardship”, thereby removing from consideration any claim that the P&Z Commission failed to consider the element of “injurious to other property in the area.”²³ The result is that the issue was not raised on appeal to the Board of County Commissioners, an administrative remedy required by Clearwater County Ordinance.²⁴

Thus, Petitioners claims regarding this issue should be summarily dismissed.

- B. The P&Z Commission did find the ordinance was met, and that finding is supported by the record.

Regardless, in both of the findings of fact and conclusions of law issued by the P&Z Commission in this case, the Board of County Commissioners found that Galloway met the requirements of the specific ordinance considered here, and their finding is supported by substantial evidence on the record.

²³ See augmented record, minutes of Board of County Commissioners meetings.

²⁴ Clearwater County Subdivision Ordinance Article IX

It is important to put this issue into context: whether or not a subdivision on property in the vicinity of the Petitioners is something the Petitioners might not like is not the issue. Galloway has the right, by ordinance, to subdivide his own property. Specifically at issue here is whether the variances (to allow the width of the easement access road to be reduced, and to waive the requirement that it be dedicated to the public) should be approved. It is merely an issue regarding an access road. Petitioners apparently argue that a smaller, private road is more injurious to themselves than a larger public road. This is an illogical argument, and the P&Z Commission implicitly recognized this in its findings.

In both decisions (Tab 15 of the Record), the proper ordinance is identified. In both decisions, a specific holding is made that the ordinance conditions were met.

In the first decision, the P&Z Commission recites evidence received from Galloway that: "The public welfare is not impacted at all since the changes will not have an impact on emergency vehicles. Nor will it impact other owners in the area as the design and implementation is entirely within parameters of the deeded R/W [right of way] and the original (approved) plat. Carole and I are doing this low density sub with applicable CC&Rs to limit impact on the neighbors both visually and physically."²⁵

In the second decision, the P&Z Commission added the following:

The purpose of the subdivision ordinances in general are set forth in Article I, Section C of the Subdivision Ordinance and is not re-printed here. The Commission finds strict compliance with the requirements of the ordinance do inhibit the achievement of the objectives as stated, including orderly development, given the unique circumstances of the subject property. Alternatively, the variances being granted do not impede or be detrimental to the public welfare, or injurious to the public welfare or be injurious to other property in the area, will not violate the provisions of Idaho Code, nor will nullify the interest and purpose of the Ordinance or Comprehensive Plan."²⁶

Both decisions were based, in part, on information contained in staff reports such as emailed applications and information from Galloway to the Planning and Zoning Administrator, Bobbi Kaufman. Those staff reports are found at Tab 10 of the Administrative Record.

The Staff Reports were specifically referenced in each hearing. See for example, transcript of March 21, 2011 P&Z hearing, Tab 20, Page 8, and transcript of August 15, 2011

²⁵ Page 3 of April 4, 2011 P&Z findings, Tab 15 of Administrative Record;

²⁶ Tab 15 of Administrative Record, P&Z Findings dated Sept. 6, 2011, Page 7.

P&Z hearing, tab 20, page 9. It is clear that the staff report has been provided to the commission, and will be considered by the commission in its decision.

Petitioners quibble with the way the staff reports were utilized, apparently believing that the staff reports had to have been read into the record before they could be relied upon. This is an assertion contrary to the Clearwater County Planning and Zoning practice, as suggested by ordinance. For example, the Subdivision Ordinance 34, Section I, Paragraph 9(a), Commission Action, provides the procedure for public hearings on preliminary plats and specifies “On said hearing date the Commission shall review the application and the preliminary plat, the reports from the Committee members, comments from concerned persons and agencies, and the Administrator’s report to arrive at a decision on the preliminary plat.” In addition, testimony regarding covenants, conditions and restrictions was placed on the record, along with the fact that subdividing in 20 acres or more would remove the property from any County restrictions, including road construction restrictions.²⁷

In short, this case actually presents the unique circumstance that not granting the variance would be more injurious to the public, to neighboring property, and to the purpose of the ordinances themselves, than granting the variance would.

With respect to the element of the ordinance relating to neighboring property, it is clear that the P&Z Commission’s findings were not in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; not supported by substantial evidence on the record as a whole; or arbitrary, capricious, or an abuse of discretion.

The Petitioners’ request should be denied.

IV. THE CLEARWATER COUNTY BOARD OF COMMISSIONERS ACTED IN A PROPER QUASI-JUDICIAL, NOT IN AN IMPROPER LEGISLATIVE, FUNCTION.

Petitioners argue that the Clearwater County Board of Commissioners, in hearing the appeals from the Planning and Zoning Commission, improperly acted as a legislative body.

First, petitioners argue that the Commissioners failed to comply with I.C. §67-6516 and

²⁷ Tab 20 of Administrative Record, Transcript of Hearing April 15, 2011, page 15.

the Clearwater County Subdivision Ordinance. Those assertions have been responded to above. Interpretation of ordinance provisions is absolutely a proper function of the Clearwater County Board of Commissioners, especially when sitting as an appeals board, and is not to be equated with creating new ordinances.

Planning and zoning decisions are entitled to a strong presumption of validity, including the agency's application and interpretation of its own zoning ordinances. Cowan, 143 Idaho at 508, 148 P.3d at 1254. Neighbors for a Healthy Gold Fork v. Valley County, 145 Idaho 121, 126, 176 P.3d 126, 131 (2007).

Petitioners further argue that Galloway testified regarding his opinion about the outdated nature of the ordinances themselves which, coupled with the Planning and Zoning Commission's finding that the ordinance was intended to apply more to developments with a higher density "checkerboard" effect, rather than a low density rural subdivision such as Galloway was requesting, is an improper legislative modification of the County's ordinances. Galloway's comments regarding the outdated ordinances were not referenced in P&Z decisions, or Board decisions. Checkerboard effect of subdivisions was considered.

The concept of a "checkerboard effect" of subdivisions relates to a second subdivision being built next to a first, and a third next to a second, and the need to create public roads which can extend into neighboring subdivisions as land continues to be developed.

Galloway sought to vary the requirement that their access road be dedicated to the public. Thus, it was incumbent on the P&Z Commission to decide whether or not strict application of the ordinance would be impractical or unreasonable, and whether or not granting the variance would inhibit achievement of the purposes of the ordinance or be injurious to the public welfare, i.e., whether or not the requirements of a subdivision variance were met.

In the Planning and Zoning decision, dated September 6, 2011 (Tab 15 of the administrative record), page 6, paragraph 9 (g), the Commission explains that strict application of the ordinance would be impractical or unreasonable due to special circumstances or conditions affecting the property (something required by the ordinance to be considered by the Commission), due to the fact that: "...as the access road by the terms of the easement itself, and by virtue of the nature of the surrounding property, will not be utilized to support further development, there is no need to make it a public road." The P&Z Commission did not create new legislation. It merely

applied the existing legislation to the development-specific facts, as it was required to do.

Petitioners next argue that the Board of Commissioners, when sitting as an appellate board, by acknowledging that the existing ordinances would not apply at all to twenty-acre parcels of land, improperly created legislation.

First, the Board merely reviewed the Commission's hearings. It did not hold a new public hearing on the variances. Further, in that appellate capacity, the Board reviewed the Commission's finding of whether or not the variance requirements had been met, and the record to determine if there was evidence to support those findings. Specifically, the Board held:

In this case, evidence to the Commission found the road as varied provided proper, safe access, that the easement necessary to support the road as varied was adequate, that obtaining a wider easement to comply with the ordinance was impossible, that dedicating the easement to the public was impossible due to the nature of the easement, and unnecessary in that there would likely be no further developments or subdivisions using the same road for access, and that the cost of construction, even if it were possible, to build a road which complied with the ordinance was unduly exorbitant, especially in light of the 10 to 20 vehicle trips per day which is all that is anticipated for this low density very rural development at maximum housing capacity. The road as varied (easement, road width, public dedication) was deemed adequate by reviewing professionals including the Clearwater County Road Department and the Evergreen Fire District.

Failure to grant the requested variances would have the result in the inability to subdivide the real property into less than 20 acre parcels, without any control or jurisdiction over the road at all by Clearwater County, and with the possibility of more residences being in place and a higher traffic load than as currently proposed, due to the lack of controlling ordinances being in place for 20 acre or larger parcels. Thus, the public interest may actually be hurt by failure to grant the variances."²⁸

At no point did the Board attempt to create new legislation. The Board merely applied the current ordinances, and commented that how, under these circumstances, not only is the public interest not injured by the variance grants, but that the public interest could actually be hurt by failure to grant the variance. The Petitioners make their assertion by taking a single paragraph out of context.

Finally, the Petitioners argue that the Board of County Commissioners exceeded its

²⁸ Administrative Record, Tab 16, BOCC Appeal Decision dated November 21, 2011, page 4.

statutory authority by attempting to adjudicate the rights of the respective parties regarding the easement. Petitioners assert that the Planning and Zoning Commission lacks authority to determine the nature and scope of an easement as questions of property ownership, and they must be decided by a Court. Clearwater County absolutely agrees with Petitioners on this point. At no time in any decision by the Planning and Zoning Commission or the Board of County Commissioners did Clearwater County ever assert that its grant of a variance is a court adjudication of the Galloway's and Shinn's relative ownership rights with respect to the easement itself. Specifically, the Board of County Commissioners stated:

In the context of planning and zoning, it is not the practice or policy of the Clearwater County Planning and Zoning Commission, or the Board of Commissioners, to become embroiled in disputes between landowners regarding the intent of easements which have been granted. The County looks at the bare language of the easement itself, and if that language appears clear and unambiguous to the County, sufficient to provide a right of access to the proposed subdivision, the County will not delve further into the intent of the parties regarding that easement. ***The Clearwater County planning and zoning structure is not intended, nor shall be utilized, as a substitute for a court of law to resolve easement disputes between landowners.***

Courts recognize this approach when interpreting easements in general: "In construing an easement in a particular case, the instrument granting the easement is to be interpreted in connection with the intention of the parties, and the circumstances in existence at the time the easement was granted and utilized. *Dr. James Cool, D.D.S. v. Mountainview Landowners Co-op. Ass'n, Inc.*, 139 Idaho 770, 773, 86 P.3d 484, 487 (2004) The existence of ambiguity determines the standard of review of a lower court's interpretation of a contract or instrument. *Union Pac. R.R. Co. v. Ethington Family Trust*, 137 Idaho 435, 437-38, 50 P.3d 450, 452-*53 (2002).

In the absence of ambiguity, the document must be construed in its plain, ordinary and proper sense, according to the meaning derived from the plain wording of the instrument. *See Juker v. American Livestock Ins. Co.*, 102 Idaho 644, 645, 637 P.2d 792 793 (1981). *C & G, Inc. v. Rule*, 135 Idaho 763, 765, 25 P.3d 76, 78 (2001).

The easement in question (Appeal Record Section 13) provides a bare, unequivocal grant of non-exclusive easements to Galloway, and Galloway's heirs, successors and assigns, with the only limitation being as follows: "This Grant of Easements is binding upon and ensures to the benefit of the heirs, assigns, and successors of the parties hereto, and the easement for ingress and egress shall not be deemed a public right-of-way."

"Public right-of-way" is a term of art, defined in Idaho Code Section 40-117 (9) as a right of way open to the public and under the jurisdiction of the public highway agency, where the agency has no obligation to construct or maintain the same. With the grant of a

variance to Galloway allowing the access road to remain a private, rather than a public road, then the easement appears on its face for planning and zoning purposes, to allow for development.

This is not meant nor is to be construed as a finding based upon a disputed hearing as to the intent of the parties to the easement itself, ***but is to be construed as a finding solely for agency planning and zoning purposes.***²⁹

It is incumbent upon the County to act on applications for subdivisions. In the event an easement serves as the access road for that subdivision, the County will look at the bare language of the easement itself, but will not delve into the intent of the parties. That is how the County can process subdivision requests without attempting to judicially determine landowner rights.

If the easement language appears clear and unambiguous, Clearwater County will deem it sufficient for planning and zoning agency purposes. That decision is not binding on any Court, nor considered binding on the landowners by the County, but exists merely for planning and zoning agency purposes. In fact, it is generally never even referenced in subdivision requests. The reason it became an issue here is because the Petitioners filed an appeal to the Board of Commissioners in part on grounds that the easement language did not allow for subdivision. Petitioners put the matter at issue, forcing the County to consider it.

If a landowner challenges an easement holder's right to utilize an easement for subdivision purposes, that landowner has remedies in District Court, regardless of any planning and zoning decision. At no time did Clearwater County assert otherwise; in fact, Clearwater County took great pains to describe that exact precept in detail. The Petitioners initially sought a decision from Clearwater County finding that the intent of the easement would prohibit subdivision. In other words, the Petitioners asked Clearwater County to do exactly what Petitioners allege the County improperly did here, but to find in their favor. Clearwater County refused to engage in that analysis, recognizing that the analysis is proper only for the Courts, while still recognizing the need for the County to make a subdivision determination. Petitioners retain their ability to litigate the nature and intent of the easement itself. The County decision does not alter that in any manner.

²⁹ Administrative Record, Decision of Board of County Commissioners dated November 21, 2011, Tab 16, Page 7

Accordingly, the Board of County Commissioners, sitting as an appellate board to review the grant of variances by the Clearwater County Planning and Zoning Commission, properly found that the road access was appropriate, and that the finding was not arbitrary, capricious, and was supported by substantial competent evidence, and was not made in violation of law or procedure.

CONCLUSION:

Clearwater County, through the P&Z procedures, and through the appeal to the Board of Commissioners, exhaustively and carefully considered the variance requests by Galloway. Clearwater County's decision to grant the variances was well-supported by facts on the record, was well within carefully researched and detailed law, was not an abuse of discretion, and was based on lawful procedure.

Petitioner's request for relief should be denied.

DATED this 3rd day of July, 2012.



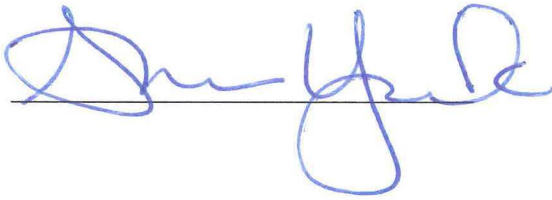
E. CLAYNE TYLER
PROSECUTING ATTORNEY

CERTIFICATE OF DELIVERY/MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed to the following on this 3rd day of July, 2012:

Garry W. Jones
Jones, Brower & Callery, PLLC
P.O. Box 854
Lewiston, ID 83501

By: _____



SECOND JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF CLEARWATER
150 MICHIGAN AVE
OROFINO, IDAHO 83544

FILED 7/13/2012 AT
2:46pm OROFINO, IDAHO
BY [Signature]

Edward L Shinn, etal.

vs.

Board Of County Commissioners Of Clearwater County

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)
)
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Case No: CV-2011-0000500

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Oral Arguments
Judge:
Courtroom:

Tuesday, August 28, 2012
Michael J Griffin
District Courtroom

3:30 PM

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice were served as follows on July 13th, 2012.

GARRY W JONES
P.O. BOX 854
LEWISTON ID 83501

(208) 746-9553

☒ Mailed ☐ Hand Delivered ☐ Faxed

E.CLAYNE TYLER
COURTHOUSE MAIL
OROFINO ID 83544

☐ Mailed ☒ Hand Delivered ☐ Faxed



Dated: July 13th, 2012

Carrie Bird

Clerk Of The District Court

By:

Deputy Clerk

Christy L Hering



Garry W. Jones (ISB No. 1254)
Karin Seubert (ISB No. 7813)
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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)	CASE NO. CV 2011-00500
ZV2011-2)	
EDWARD L. SHINN and)	PETITIONERS' REPLY BRIEF
DONILEE E. SHINN, husband and wife,)	
Petitioners,)	
BOARD OF COUNTY COMMISSIONERS))	
OF CLEARWATER COUNTY, IDAHO,)	
Respondent.)	
_____)	

COMES NOW EDWARD L. SHINN and DONILEE SHINN, husband and wife, petitioners, by and through GARRY W. JONES, their attorney of record, and, in compliance with this Court's Order for Briefing dated April 27, 2012, submits this Reply Brief in support of their Petition for Judicial Review filed on December 19, 2011.

Petitioners' Memorandum of Law in Support of Petition for Judicial Review summarized the procedural and factual background of the case and the applicable law. This Reply Brief will

not restate said background and argument. Instead, this Reply Brief will be limited in scope to the points raised by Clearwater County in its Brief dated July 3, 2012.

DISCUSSION

1. The distinction drawn between zoning and subdivisions is inconsequential.

Clearwater County draws a distinction between zoning and subdivisions to support its contention that Idaho Code Section 67-6516 applies only to zoning, not subdivisions. *Respondent's Reply Brief* at 6-7, 15. To that end, Clearwater County argues that the Clearwater County Subdivision Ordinance need not comply with the “characteristics of the site” language from said statutory provision because such requirements apply only, in their view, to local zoning ordinances, not subdivision ordinances. *Id.*

However, any distinction between a local zoning ordinance and subdivision ordinance as applied here is merely an academic exercise because Clearwater County has explicitly adopted the “undue hardship” requirement of Idaho Code Section 67-6516 and interpreting case law for purposes of its analysis of the subject variances in this case.¹ Specifically, the Decision at issue defined “undue hardship” as “some condition which is analyzed on a case by case basis due to the characteristics of the site, or due to special circumstances or conditions, which are peculiar to the property and not applicable generally to land or buildings in the neighborhood. *Tr.*, Tab 16 (emphasis added) (Decision dated November 21, 2011) (citing to *Blaha v. Board of Ada County Commr's*, 134 Idaho 770, 9 P.3d 1236 (2000); *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009); *Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984)).

¹ At footnote 16 of its brief and the associated text, Clearwater County quotes from the Decision by Clearwater County Board of Commissioners dated November 21, 2011 at 4 (found at *Tr.*, Tab 16), and admits that said excerpt's reference to I.C. §67-5279 was in error and should have been to I.C. §67-6516.

Because the Board of Clearwater County Commissioners explicitly relied upon Idaho Code Section 67-6516 and interpreting case law, it is inconsistent and illogical for Clearwater County to argue that the same case law, namely the decision of *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.3d 1108 (Ct. App. 1984), is somehow inapplicable in this judicial review because said decision involved a zoning variance rather than a subdivision variance. The *City of Burley* case establishes that economic feasibility and expense versus benefit arguments are of general applicability, not due to the “characteristics of the site,” and thus fail to substantiate a variance request. Likewise, here, the increased cost of compliance with the subdivision ordinance does not warrant a variance due to “undue hardship.” The requested variances should be reversed on this ground.

Further, Clearwater County is correct that the self-inflicted nature of the alleged “undue hardship” does not automatically disqualify the applicants from a variance. Petitioners do not dispute that. However, the *Dawson* decision cited by both parties stands for the proposition that the self-inflicted nature of the undue hardship must be considered when evaluating a variance request. 98 Idaho 506, 567 P.2d 1257 (1977). The Planning and Zoning Commission, as affirmed by the Board of Clearwater County Commissioners, failed to consider said factor. Said failure constitutes reversible error.

2. Even if the Court deems I.C. 67-6516 inapplicable, reversal is still warranted based on Clearwater County’s failure to properly apply its Subdivision Ordinance.

Reversal is further warranted because the Planning and Zoning Commission, as affirmed by the Board of Clearwater County Commissioners, failed to properly apply the Clearwater County Subdivision Ordinance.

Petitioners do not dispute that planning and zoning decisions are entitled to a strong presumption of validity, including the agency’s application and interpretation of its own zoning

ordinances. *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 131 (2007) (citations omitted). However, said presumption does not allow for the arbitrary, capricious and unreasonable disregard of the clear and express language of the subdivision ordinance. The Planning and Zoning Commission does not have unfettered discretion to interpret the Clearwater County Subdivision in any manner it sees fit. Affected property owners, like Petitioners, are entitled to the reasonable application of local ordinances.

Here, the Planning and Zoning Commission, as affirmed by the Board of Clearwater County Commissioners, failed to properly apply the Clearwater County Subdivision Ordinance by improperly approving the requested variances despite the lack of sufficient evidence presented to determine whether the requested variances would be “injurious to other property” as is required under Article VIII(B)(3) of the Clearwater County Subdivision Ordinance. *Tr.*, Tab 15 (Findings of Fact and Written Decisions dated April 4, 2011 and Sept. 6, 2011). Similarly, and indicative of the absence of sufficient evidence, the Planning and Zoning Commission made no findings of fact as to whether the requested variances would be “injurious to other property” as is required under Article VIII(B)(3). *Id.* The clear language of the Clearwater County Subdivision Ordinance requires compliance with all of the prerequisites set forth in Article VIII(B) of said Ordinance, including that “the granting of the specified variance will not be detrimental to the public welfare or injurious to other property in the area in which the property is situated.”

Clearwater County points to no evidence that was presented on this point other than information contained in staff reports, such as emailed applications and information from the applicant to the Planning and Zoning Administrator. *Respondent’s Reply Brief* at 19.

Clearwater County takes great umbrage at the Petitioners' argument that the staff reports were not properly before the Planning and Zoning Commission because they were not read into the record or otherwise admitted, thus could not in and of themselves constitute evidence to support the requisite findings of fact, specifically that the requested variances would be "injurious to other property." However, just because the reliance on staff reports not admitted into the record may reflect "Clearwater County Planning and Zoning practice" does not make such practice compliant with Idaho law.

Idaho Code Section 67-6536 states as follows:

In every case in this chapter where an appeal is provided for, a transcribable verbatim record of the proceeding shall be made and kept for a period of not less than six months after a final decision on the matter. The proceeding envisioned by this statute for which a transcribable verbatim record must be maintained shall include all public hearings at which testimony or evidence is received or at which an applicant or affected person addresses the commission or governing board regarding a pending application or during which the commission or governing board deliberates toward a decision after compilation of the record.

The Courts have concluded that said transcribable record is "indispensable to meaningful judicial review" of land use proceedings "where the sufficiency of notice, adequacy of opportunity to present or to rebut evidence, or the existence of evidence supporting the agency's findings may be put at issue." *Rural Kootenai Org., Inc. v. Board of Comm'rs*, 133 Idaho 833, 842, 993 P.2d 596, 607 (citing *Gay v. County Comm'rs of Bonneville County*, 103 Idaho 626, 629, 651 P.2d 560, 563 (Ct.App. 1982)).

The only reasonable conclusion that can be drawn from this statute is that the record on appeal is limited to that testimony or evidence received and an applicant's or affected person's address to the appropriate governing board.

Further, the clear and express language of the Clearwater County Subdivision Ordinance establishes that a variance shall be approved only after the necessary factual findings are made

“as a result of public hearing.” CCSO, Art. VIII(B). In support of its argument that the Clearwater County Planning and Zoning “practice” governs, Clearwater County cites to the procedure for public hearings for variance provisions, which references staff reports as a basis for consideration of a preliminary plat. *Respondent’s Reply Brief* at 20 (citing CCSO 34, § I, ¶ 9(a)). No such reference is included in the clear language of the variance procedure. CCSO, Art. VIII(B). Therefore, the reasonable conclusion that should be drawn is that the absence of such a reference indicates a legislative intent to limit the deliberation to the public hearing only, which in this instance did not include staff reports.

Excluding the staff reports outside of the public hearing, Clearwater County points to no other evidence presented or findings of fact made as to whether the requested variances would be “injurious to other property.” *Respondent’s Reply Brief* at 20. As such, the requested variances should be reversed.

3. Petitioners preserved their right to appeal.

Clearwater County’s contention that Petitioners “limited their appeal to the issue of ‘undue hardship’” and effectively waived the consideration of full compliance with the Clearwater County Subdivision Ordinance issue on appeal is without merit. The summarized letter dated March 25, 2011 and submitted in support of Petitioners’ Application for Appeal clearly states, in relevant part, “Grounds for appeal. No facts or testimony were presented which would authorize the issuances of a variance under the terms and conditions of the Clearwater County Subdivision Ordinance.” *Tr.*, Tab 1. Said “summarized letter” appropriately defined the scope of Petitioners’ appeal, which encompasses the absence of sufficient evidence and relevant findings of fact as to whether the requested variances would be “injurious to other property.”

It is well settled that oral argument is a mechanism to emphasize and illuminate one's position. The emphasis or lack of emphasis of one or more factors or elements does not constitute a waiver where the applicable Notice of Appeal was inclusive of the allegedly waived issues. Petitioners were not required to present oral argument before the Board of County Commissioners. Their statements and arguments before the Board of County Commissioners, which may have focused on the "undue hardship" analysis, did not constitute a waiver of all other issues as Clearwater County contends.

Said "summarized letter" as required by the "Clearwater County Application for Appeal" through the Application for Appeal it generated preserves all issues Petitioners raise on appeal.

4. Legislative function is broader than Clearwater County contends.

Clearwater County misinterprets Petitioners' argument that the Board of County Commissioners exceeded by acting in an improper legislative function. Petitioners do not contend that the Board of County Commissioners attempted to enact new ordinances. Instead, Petitioners suggest that by relying on a perceived gap in the subdivision ordinance, that being the lack of controlling ordinances over the subdivision of the subject property into 5 20-acre parcels by right, the Board of County Commissioners exercised a policy decision. When sitting in a quasi-judicial role, the Board is constrained to apply and interpret the Clearwater County Subdivision Ordinance in its current form, not how it wishes it should be. In doing so, the Board of County Commissioners exceeded its authority, which constitutes reversible error.

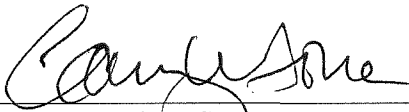
CONCLUSION

For these reasons, Petitioners EDWARD L. SHINN and DONILEE SHINN respectfully request that this Court reverse the Clearwater County Board of Commissioners' denial of their appeal of the approval of variances requested by Edward E. Galloway and Carole Galloway as

ZV2011-2. At that time, Mr. and Mrs. Galloway's request in Subdivision Request SUB060096 cannot be sustained and must also be denied.

DATED this 14th day of July, 2012.

JONES, BROWER & CALLERY, P.L.L.C.


GARRY W. JONES


KARIN SEUBERT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *PETITIONERS' REPLY BRIEF* was, this 14th day of July, 2012,

☐ hand-delivered
☒ mailed, postage pre-paid,
by first-class mail; or
☒ transmitted via facsimile

to:

E. Clayne Tyler
CLEARWATER COUNTY PROSECUTOR
P.O. Box 2627
Orofino, ID 83544


KARIN SEUBERT

Garry W. Jones (ISB No. 1254)
Karin Seubert (ISB No. 7813)
JONES, BROWER & CALLERY, P.L.L.C.
1304 Idaho Street
P. O. Box 854
Lewiston, Idaho 83501
(208) 743-3591



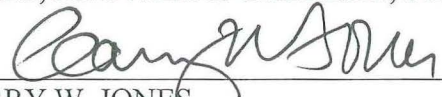
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)	CASE NO. CV 2011-00500
ZV2011-2)	
)	
EDWARD L. SHINN and)	NOTICE OF ASSOCIATION
DONILEE E. SHINN, husband and wife,)	
)	
Petitioners,)	
)	
BOARD OF COUNTY COMMISSIONERS))	
OF CLEARWATER COUNTY, IDAHO,)	
)	
Respondent.)	
_____)	

KARIN SEUBERT of the Law Firm of Jones, Brower & Callery, P.L.L.C., hereby enters an appearance as co-attorney of record for the petitioners EDWARD L. SHINN and DONILEE SHINN in the above entitled matter.

DATED this 14th day of July, 2012.

JONES, BROWER & CALLERY, P.L.L.C.


GARRY W. JONES


KARIN SEUBERT

CERTIFICATE OF SERVICE

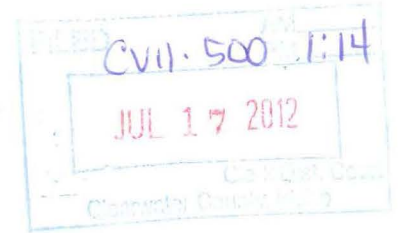
I HEREBY CERTIFY that a true and correct copy of the foregoing *NOTICE OF ASSOCIATION* was, this 14 day of July, 2012,

mailed to

E. Clayne Tyler
CLEARWATER COUNTY PROSECUTOR
P.O. Box 2627
Orofino, ID 83544

Karin Seubert
KARIN SEUBERT

E. CLAYNE TYLER, ISBN 5277
Clearwater County Prosecuting Attorney
P.O. Box 2627
Orofino, ID 83544
Telephone: 208-476-5611
Fax: 208-476-4642



Deputy: LORI GILMORE, ISBN 5877

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)
ZV2011-2)
)
EDWARD L. SHINN and)
DONILEE E. SHINN, husband and wife,)
)
Petitioners,)
)
BOARD OF COUNTY COMMISSIONERS)
OF CLEARWATER COUNTY, IDAHO,)
)
Respondent.)
_____)

CASE NO: CV2011-500

NOTICE OF HEARING:
MOTION TO AUGMENT
ADMINISTRATIVE RECORD

NOTICE IS HEREBY GIVEN that a hearing will be held on the 7th day of August, 2012,
at the hour of 10:00 o'clock a.m. to hear the Motion to Augment Record filed in this matter.

NOTICE is further given that the defendant may call witnesses and present exhibits at the
hearing.

DATED this 17th day of July, 2012.

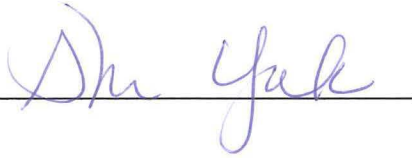

E. CLAYNE TYLER
PROSECUTING ATTORNEY

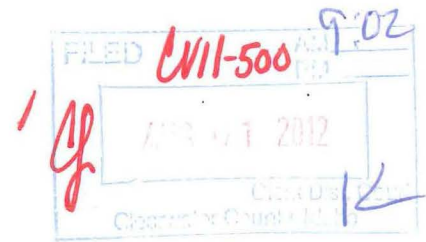
CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed to the following on this 17th day of July, 2012:

Garry W. Jones
Jones, Brower & Callery, PLLC
P.O. Box 854
Lewiston, ID 83501

By: _____

A handwritten signature in blue ink, appearing to read "Garry Jones", written over a horizontal line.



E. CLAYNE TYLER, ISBN 5277
 Clearwater County Prosecuting Attorney
 P.O. Box 2627
 Orofino, ID 83544
 Telephone: 208-476-5611
 Fax: 208-476-4642

Deputy: LORI GILMORE, ISBN 5877

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)
 ZV2011-2)

CASE NO: CV2011-500

EDWARD L. SHINN and)
 DONILEE E. SHINN, husband and wife,)
)
 Petitioners,)

STIPULATION TO AUGMENT RECORD

BOARD OF COUNTY COMMISSIONERS)
 OF CLEARWATER COUNTY, IDAHO,)
)
 Respondent.)


COME NOW, E. Clayne Tyler, Prosecuting Attorney in and for the County of
 Clearwater, State of Idaho, and Garry W. Jones, attorney of record for the Petitioners and hereby
 agree and stipulate to augment the record in this matter with the minutes from the Clearwater
 County Board of Commissioners and moves the Court to augment the administrative record in
 the above matter pursuant to I.C. § 67-5275.

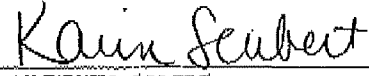
The record shall be augmented to include the minutes of the Clearwater County Board of
 Commissioners meetings dated June 6, 2011 and June 27, 2011. These minutes include minutes

STIPULATION TO AUGMENT RECORD -1

from appeal hearings before the Board of County Commissioners, at issue in this case.

DATED this 31 day of July, 2012.


E. CLAYNE TYLER
PROSECUTING ATTORNEY


for GARRY W. JONES
JONES, BROWER & CALLERY

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed to the following on this 1st day of ~~July~~ August, 2012.

Garry W. Jones
JONES BROWER & CALLERY, PLLC
1304 Idaho St
PO Box 854
Lewiston, ID 83501-0854

By: 

STIPULATION TO AUGMENT RECORD -2

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, AND FOR THE COUNTY OF CLEARWATER

EDWARD L. SHINN, et al.)	
)	
Plaintiffs,)	CASE NO. CV2011-500
)	
vs.)	COURT MINUTES
)	
CLEARWATER COUNTY BOARD)	
BOARD OF COUNTY)	
COMMISSIONERS, et al.)	
)	
Defendants.)	

Michael J. Griffin, District Judge
Dale O. Cox, Appearing on behalf of the Plaintiffs
Thomas W. Callery, Appearing on behalf of the Defendants
Date: 08/28/2012 Tape: CD534-1 Time: 3:43 P.M.
Subject of Proceeding: Oral Argument

=====

FOOTAGE:

3:43 The Honorable Michael J. Griffin, District Judge, presiding. Court gives introductions. Parties present: Dale O. Cox present in Court and representing the plaintiffs. Thomas W. Callery present representing the defendants.

3:43 Ms. Seubert gives argument.

3:57 Mr. Tyler gives argument.

4:15 Ms. Seubert gives rebuttal argument.

4:19 Court commends counsel on the briefing they submitted and will issue a written decision in this matter. Due to trial settings the decision may not be out for three weeks.

4:20 Court in recess.

APPROVED: 
MICHAEL J. GRIFFIN
DISTRICT JUDGE

Christy Gering – Deputy Clerk
COURT MINUTES - 1

SCANNED

9-20-2012

CV11-500 5:19

SEP 11 2012

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of
Variance ZV2011-2

CASE NO. CV 2011-500

EDWARD L. SHINN and DONILEE E.
SHINN, husband and wife,

FINDINGS AND CONCLUSIONS

Petitioners,

vs.

BOARD OF COUNTY COMMISSIONERS
OF CLEARWATER COUNTY, IDAHO,

Respondents.

Petitioners, Edward L. Shinn and Donilee E. Shinn, have appealed the variances granted by the Clearwater County Planning and Zoning Commission to Ed and Carole Galloway. The granting of the variances was upheld by the Clearwater County Commission. The appeal argued that no facts or testimony were presented which would authorize the issuance of the variances under the terms and conditions of the Clearwater County Subdivision Ordinance.

FACTUAL BACKGROUND

Edward and Carole Galloway own a 100 acre parcel of rural land (zoned residential) in Clearwater County. Access to that parcel of land is from a county road, Middle Road, via a 60-foot easement. Thirty (30) feet of the easement lies

over the land of Petitioners, Edward and Donilee Shinn. That easement was granted to the Galloways by Shinn's predecessor-in-interest in 1998. The easement was not to be deemed a public right of way.

Without any variances the Galloways could subdivide their property into five (5) 20 acre parcels.

The Galloways filed an application to subdivide the property into ten (10) 10-acre parcels. The Galloways then applied to the Planning and Zoning Commission for three variances from the subdivision ordinances to effectuate their planned subdivision.

The subdivision ordinances in effect at the time required that access roads have a 60 foot right-of-way, with a finished road surface of 25 feet. Galloways asked for a variance to have a 30 foot right-of-way, with a 15 foot finished surface once the road leaves the petitioners' property and enters their 100 acre parcel. That would comport with the existing roadway. The subdivision ordinance also required that access roads be dedicated to public use. Galloways asked to waive that requirement because of the terms of their easement.

The variance requests were heard and approved by the Clearwater County Planning and Zoning Commission. Petitioners appealed that decision to the Clearwater County Board of Commissioners. The Commissioners remanded the decision to the Planning and Zoning Commission to determine if there would be an undue hardship on the Galloways if they were required to abide by the terms of the subdivision ordinance.

Following another public hearing, the Planning and Zoning Commission again approved the variances, finding that without approval of the variances, the Galloways would not be able to subdivide their property into ten (10) parcels, which would impose an undue hardship on them.

The Petitioners again appealed the decision to the County Commissioners. After consideration, the Commissioners approved the action of the Planning and Zoning Commission, finding that there was sufficient evidence presented to authorize the variances in accordance with the subdivision ordinances, and that any undue hardship was not of the Galloway's own making, and that the easement, for planning and zoning purposes, allowed development.

JUDICIAL REVIEW

For purposes of judicial review, a local agency making a land use decision, such as the Board of Commissioners, is treated as a government agency under the Idaho Administrative Procedures Act. Evans v. Teton Co., 139 Idaho 71, 74 73 P.3d 84, 87 (2003). The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. I.C. § 67-5279(1). The Commissioners' factual determinations are binding, even when there is conflicting evidence, as long as their determinations are supported by substantial and competent evidence. Wohrle v. Kootenai County 147 Idaho 267, 274, 207 P.3d 998, 1005 (2009). There is a strong presumption in favor of the validity of the actions of county boards of commissioners in interpreting and applying their own ordinances. *Id.*, citing Sanders Orchard v. Gem County, 137 Idaho 695, 698, 52 P.3d 840, 843 (2002).

"In reviewing such decisions, [under the Local Land Use Planning Act], the courts of the state are directed to consider the proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision-making. Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision", Idaho Code §67-6535(3).

Under both the Local Land Use Planning Act, Idaho Code 67-6501 et. seq. and the Administrative Procedures Act, Idaho Code 67-5202 et. seq., the court's first consideration while reviewing these decisions is whether the Petitioners have demonstrated that their substantial rights have been harmed. Idaho Code § 67-6535(3), Idaho Code § 67-5279(4), Hawkins v. Bonneville County Board of Commissioners 151 Idaho 228, 232, 254 P.3d 1224, 1228 (2011). Regardless of whether the Commissions erred by granting variances to the Galloways, the Petitioners must first show that the variances violate their substantial rights. Hawkins at 232, 254 P.3d at 1228.

To have standing in a land-use case, the petitioner needs to allege, not prove, only that the development could potentially harm his or her real estate interests. Evans v. Teton Cnty., 139 Idaho 71, 76, 73 P.3d 84, 89 (2003).

The petitioners have standing to file a petition for review. They fear that allowing the Galloways to subdivide their property would potentially cause an increase in the use of the road across the petitioners' land.

However to prevail petitioners must show, not merely allege, real or potential prejudice to their substantial rights. I.C. § 67-5279(4). Since a party opposing a landowner's request for a variance has no substantial right in seeing someone else's application adjudicated correctly, the petitioner must therefore show something more. The petitioner opposing a variance must be in jeopardy of suffering substantial harm if the project goes forward, such as a reduction in the opponent's land value or interference with their use or ownership of the land. See Price v. Payette Cnty. Bd. of Cnty. Comm'rs, 131 Idaho 426, 431, 958 P.2d 583, 588 (1998).

Regardless of whether the Board erred by granting variances to the Galloways, the petitioners cannot prevail on their petition for review unless they show that the variances prejudice their substantial rights. "The party challenging the decision of the Board must not only demonstrate that the Board erred in a manner specified by I.C. § 67-5279(3) but must also show that its substantial rights have been prejudiced." Kirk-Hughes Dev., LLC v. Kootenai Cnty. Bd. of Cnty. Comm'rs, 149 Idaho 555, 557, 237 P.3d 652, 654 (2010) (citing I.C. § 67-5279(4)).

The Court may affirm a Board of Commissioners' decision solely on the grounds that the petitioner has not shown prejudice to a substantial right.

DISCUSSION

Both parties agreed during argument that without any variances the Galloways could subdivide their property into five (5) 20 acre parcels. With the variances the Galloways could subdivide their property into ten (10) 10 acre parcels. It is unknown whether the ten parcels would be purchased by ten separate persons, or whether a potential buyer would buy more than one parcel.

If the Galloways subdivided their property into ten (10) 10 acre parcels, would that prejudice a substantial right of the petitioners?

The petitioners have not shown that a subdivision consisting of 10 parcels versus 5 parcels would devalue their property in any way. They have also not

shown that any potential increase in traffic over the existing non-public easement would substantially interfere with their use or ownership of their property.

CONCLUSION

The petitioners have standing to request a judicial review of the Board of Commissioners' actions in approving the variances requested by the Galloways, but the petitioners have not shown that the variances would prejudice any substantial right of theirs.

Therefore, the action of the Board of Commissioners should be upheld.

Dated this 11th day of September, 2012.



Michael J. Griffin
District Judge

CERTIFICATE OF MAILING

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed to, faxed to, or delivered by me on the 11th day of September, 20 12, to:

E. Clayne Tyler
Clearwater County Prosecuting Attorney

____ U. S. Mail
____ Fax
☒ Courthouse Mail + Email

Karin Seubert
Attorney at Law
1304 Idaho Street
P.O. Box 854
Lewiston, Idaho 83501

____ U. S. Mail



Carrie Bird, Clerk of Court

By: C. Gering

Deputy Clerk

SCANNED

11-15-12



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of
Variance ZV2011-2

CASE NO. CV 2011-500

EDWARD L. SHINN and DONILEE E.
SHINN, husband and wife,

JUDGMENT

Petitioners,

vs.

BOARD OF COUNTY COMMISSIONERS
OF CLEARWATER COUNTY, IDAHO,

Respondents.

For the reasons set forth in the court's Findings and Conclusions filed contemporaneously with this Judgment the actions of the Clearwater County Board of Commissioners in approving Variance ZV2011-2 are affirmed. The petitioners' appeal is Dismissed.

Dated this 11th day of September, 2012.


Michael J. Griffin
District Judge

CERTIFICATE OF MAILING

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed to, faxed to, or delivered by me on the 11th day of Sept., 2012, to:

E. Clayne Tyler
Clearwater County Prosecuting Attorney

☐ U. S. Mail
☐ Fax
☒ Courthouse Mail & Email

Karin Seubert
Attorney at Law
1304 Idaho Street
P.O. Box 854
Lewiston, Idaho 83501

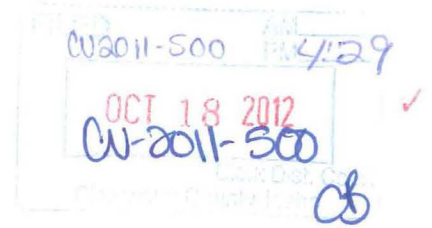
☒ U. S. Mail



Carrie Bird, Clerk of Court

By: C. Gering
Deputy Clerk

Garry W. Jones (ISB No. 1254)
Karin Seubert (ISB No. 7813)
JONES, BROWER & CALLERY, P.L.L.C.
1304 Idaho Street
P. O. Box 854
Lewiston, Idaho 83501
(208) 743-3591



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)	CASE NO. CV 2011-00500
ZV2011-2)	
EDWARD L. SHINN and)	NOTICE OF APPEAL
DONILEE E. SHINN, husband and wife,)	
Appellants,)	
BOARD OF COUNTY COMMISSIONERS))	
OF CLEARWATER COUNTY, IDAHO,)	
Respondent.)	
_____)	

TO: BOARD OF COUNTY COMMISSIONERS OF CLEARWATER COUNTY, IDAHO, the
above-named respondent; and
TO: E. CLAYNE TYLER, attorney for the above-named respondent, P.O. Box 2627, Orofino,
ID 83544; and
TO: THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, EDWARD L. SHINN and DONILEE E. SHINN,
appeal against the above named respondent to the Idaho Supreme Court from the Findings and
Conclusions and Judgment entered in the above-entitled action on the 11th day of September, 2012,
Honorable Michael J. Griffin presiding.

2. That the parties have a right to appeal to the Idaho Supreme Court, and the

judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a), I.A.R.

3. A preliminary statement of the issues on appeal are:

a. Whether the Court erred in failing to give due deference to the Board of County Commissioners determination that appellants have a substantial right implicated by the approval or denial of the subject variances.

b. Whether the Court erred in failing to find that appellants alleged that the subject variances could potentially harm their real estate interests.

c. Whether the Court erred in failing to find that appellants have demonstrated that their substantial rights will be harmed by the subject variances.

d. Whether the Court erred in failing to determine whether the subject decision of the Board of County Commissioners was in error in a manner specified by Idaho Code Section 67-5279(3).

e. Whether the Court erred in dismissing appellants' Petition for Judicial Review.

f. Such other issues which may be raised by appellants.

4. No orders have been entered sealing any portion of the record.

5. The appellants request the preparation of the reporter's standard transcript in both hard copy and electronic format. Said transcript may be in compressed format.

6. The Appellants request the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

a. Appellants' Memorandum of Law in Support of Petition for Judicial Review dated May 21, 2012;

c. Respondent's Reply Brief dated July 3, 2012;

d. Appellants' Reply Brief dated July 14, 2012;

e. The entire Administrative Record of Variance ZV2011-2 and Appeals from

the Clearwater County Board of Commissioners as lodged on February 17, 2012, and augmented by stipulation on August 1, 2012, including the Decisions by the Clearwater County Board of Commissioners dated July 29, 2011, November 21, 2011, and December 19, 2011, Findings of Fact and Written Decisions of the Planning and Zoning Commission dated April 4, 2011 and September 6, 2011, transcript of hearings before the Clearwater County Planning and Zoning Commission on March 21, 2011 and August 15, 2011, the transcript of hearings before the Clearwater County Board of County Commissioners on October 24, 2011 and November 7, 2011, all related variance applications, appeal applications, correspondence, and related materials.

7. No exhibits were offered or admitted as exhibits to the District Court.

8. I certify:

a. A copy of this Notice of Appeal has been served on the reporter of the proceeding at the following address: Keith Evans, 380 Clear Creek Road, Kooskia, ID 83539.

b. That the estimated fee for the reporter's transcript has been paid.

c. That the estimated fee for preparation of the clerk's record has been paid.

d. That the appellate filing fee has been paid.

e. That service has been made upon all parties required to be served pursuant to I.A.R.,

Rule 20.

DATED this 18 day of October, 2012.

JONES, BROWER & CALLERY, P.L.L.C.

Karin Seubert
KARIN SEUBERT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *NOTICE OF APPEAL* was, this 18 day of October, 2012, hand-delivered to:

E. Clayne Tyler
CLEARWATER COUNTY PROSECUTOR
P.O. Box 2627
Orofino, ID 83544

Karin Seubert
KARIN SEUBERT

Case No 2011-500
Filed 10/29/12
at 9:50 o'clock A M ✓
Carrie Bird

By BP Clerk
Deputy

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER
2012 OCT 25 A 9:09

In the Matter of the Approval of Variance)
ZV2011-2)

EDWARD L. SHINN and)
DONILEE E. SHINN, husband and wife)

Petitioners/Appellants,)
vs.)

BOARD OF COUNTY)
COMMISSIONERS OF CLEARWATER)
COUNTY, IDAHO)

Respondents/Respondents.)

CASE NO. CV2011-500

CLERK'S CERTIFICATE OF APPEAL

Supreme Court No 40436

Appeal from: Second Judicial District, Clearwater County, the Honorable Michael J. Griffin presiding.

Case number from District Court: CV2011-00500.

Order or judgment appealed from: Findings and Conclusions, filed 09/11/2012.

Attorney for Appellant: Karin Seubert, Jones, Brower and Callery, P.L.L.C., P.O. Box 854, Lewiston, Idaho 83501.

Attorney for Respondent: E. Clayne Tyler, Clearwater County Prosecuting Attorney, P.O. Box 2040, Orofino, Idaho 83544.

Appealed by: Edward L. Shinn and Donilee E. Shinn.

Appealed against: Board of County Commissioners of Clearwater County, Idaho.

Notice of Appeal Filed: October 18, 2012.

Amended Notice of Appeal filed: None

Notice of Cross-Appeal filed: None

Amended Notice of cross-Appeal filed: None

Appellate fee paid: Yes.

Respondent or Cross-Respondent's Request for additional record filed: None

Was District Court Reporter's Transcript requested? Yes.

If so, Name of Reporter: Keith Evans

Dated this 22nd day of October, 2012.

CARRIE BIRD
Clerk of the District Court

BY: Carrie Bird
Deputy

CLERK'S CERTIFICATE
OF APPEAL



Case No. W11-500
Filed 10/29/12
at 9:50 o'clock 4 M
Carrie Bird
By BP Clerk
Deputy

In the Supreme Court of the State of Idaho

IN THE MATTER OF THE APPROVAL OF
VARIANCE ZV2011-2.

EDWARD L. SHINN and DONILEE E.
SHINN, husband and wife,

Petitioner-Appellant,

v.

BOARD OF COUNTY COMMISSIONERS
OF CLEARWATER COUNTY, IDAHO

Respondent.

ORDER RE: AMENDED NOTICE OF
APPEAL

Supreme Court Docket No. 40436-2012
Clearwater County Docket No. 2011-500

The Notice of Appeal filed October 18, 2012 in District Court and October 25, 2012 in this Court requests the preparation of the "standard transcript". The "standard transcript" is for criminal appeals only. Idaho Appellate Rules 17(h), 17(o)(5)(a) and 25(a) requires the designation of hearings, to be transcribed, be listed by date(s) and title(s). Therefore, good cause appearing,

IT HEREBY IS ORDERED that the NOTICE OF APPEAL be, and hereby is, SUSPENDED for Appellant's counsel to file an AMENDED NOTICE OF APPEAL, in compliance with Idaho Appellate Rules 17(h), 17(o)(5)(a) and 25(a), with the District Court Clerk within fourteen (14) days from the date of this Order or this appeal will proceed on Clerk's Record only.

IT FURTHER IS ORDERED that this appeal is SUSPENDED until further notice.

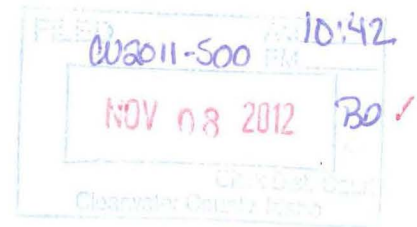
DATED this 29th day of October, 2012.

For the Supreme Court

Stephen W. Kenyon
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

ORDER RE: AMENDED NOTICE OF APPEAL – Docket No. 40436-2012



Garry W. Jones (ISB No. 1254)
 Karin Seubert (ISB No. 7813)
 JONES, BROWER & CALLERY, P.L.L.C.
 1304 Idaho Street
 P. O. Box 854
 Lewiston, Idaho 83501
 (208) 743-3591

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

In the Matter of the Approval of Variance)	CASE NO. CV 2011-00500
ZV2011-2)	
EDWARD L. SHINN and)	AMENDED NOTICE OF APPEAL
DONILEE E. SHINN, husband and wife,)	
Appellants,)	
BOARD OF COUNTY COMMISSIONERS))	
OF CLEARWATER COUNTY, IDAHO,)	
Respondent.)	

TO: BOARD OF COUNTY COMMISSIONERS OF CLEARWATER COUNTY, IDAHO, the
 above-named respondent; and
 TO: E. CLAYNE TYLER, attorney for the above-named respondent, P.O. Box 2627, Orofino,
 ID 83544; and
 TO: THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, EDWARD L. SHINN and DONILEE E. SHINN,
 appeal against the above named respondent to the Idaho Supreme Court from the Findings and
 Conclusions and Judgment entered in the above-entitled action on the 11th day of September, 2012,
 Honorable Michael J. Griffin presiding.

2. That the parties have a right to appeal to the Idaho Supreme Court, and the

AMENDED NOTICE OF APPEAL

-1-

judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a), I.A.R.

3. A preliminary statement of the issues on appeal are:
 - a. Whether the Court erred in failing to give due deference to the Board of County Commissioners determination that appellants have a substantial right implicated by the approval or denial of the subject variances.
 - b. Whether the Court erred in failing to find that appellants alleged that the subject variances could potentially harm their real estate interests.
 - c. Whether the Court erred in failing to find that appellants have demonstrated that their substantial rights will be harmed by the subject variances.
 - d. Whether the Court erred in failing to determine whether the subject decision of the Board of County Commissioners was in error in a manner specified by Idaho Code Section 67-5279(3).
 - e. Whether the Court erred in dismissing appellants' Petition for Judicial Review.
 - f. Such other issues which may be raised by appellants.
4. No orders have been entered sealing any portion of the record.
5.
 - a. A reporter's transcript is requested.
 - b. The appellants request the preparation of the following portion of the reporter's transcript in both hard copy and electronic format: Oral arguments, August 28, 2012.
6. The appellants request the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:
 - a. Appellants' Memorandum of Law in Support of Petition for Judicial Review dated May 21, 2012;
 - c. Respondent's Reply Brief dated July 3, 2012;

d. Appellants' Reply Brief dated July 14, 2012;

e. The entire Administrative Record of Variance ZV2011-2 and Appeals from the Clearwater County Board of Commissioners as lodged on February 17, 2012, and augmented by stipulation on August 1, 2012, including the Decisions by the Clearwater County Board of Commissioners dated July 29, 2011, November 21, 2011, and December 19, 2011, Findings of Fact and Written Decisions of the Planning and Zoning Commission dated April 4, 2011 and September 6, 2011, transcript of hearings before the Clearwater County Planning and Zoning Commission on March 21, 2011 and August 15, 2011, the transcript of hearings before the Clearwater County Board of County Commissioners on October 24, 2011 and November 7, 2011, all related variance applications, appeal applications, correspondence, and related materials.

7. No exhibits were offered or admitted as exhibits to the District Court.

8. I certify:

a. A copy of this Amended Notice of Appeal has been served on the reporter of the proceeding at the following address: Keith Evans, 380 Clear Creek Road, Kooskia, ID 83539.

b. That the estimated fee for the reporter's transcript has been paid.

c. That the estimated fee for preparation of the clerk's record has been paid.

d. That the appellate filing fee has been paid.

e. That service has been made upon all parties required to be served pursuant to I.A.R.,

Rule 20.

DATED this 8 day of November, 2012.

JONES, BROWER & CALLERY, P.L.L.C.


KARIN SEUBERT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *AMENDED NOTICE OF APPEAL* was, this 8 day of November, 2012, mailed by first-class, U.S. Mail, postage pre-paid to:

E. Clayne Tyler
CLEARWATER COUNTY PROSECUTOR
P.O. Box 2627
Orofino, ID 83544

Karin Seubert
KARIN SEUBERT

Case No. W2011-500
Filed 11/29/12
at _____ o'clock _____ M ✓
By BO Clerk
Deputy

1 IN THE
2 SUPREME COURT
3 OF THE
4 STATE OF IDAHO

5 In the Matter of the Approval)
6 of Variance ZV2011-2)

7 EDWARD L. SHINN and DONILEE E.)
8 SHINN, husband and wife,)
9 Appellants,)

10 vs.) DC NO. CV2011-00500
11) DOCKET NO. 40436

12 BOARD OF COUNTY COMMISSIONERS)
13 OF CLEARWATER COUNTY, IDAHO,)

14 Respondent.)
15 _____)

16 NOTICE OF LODGING

17 Notice is hereby given that the above-entitled appeal
18 was filed electronically/hard copies with the District Court
19 Clerk of Clearwater County on Thursday, November 29th, 2012,
20 consisting of 32 pages. The transcript included the
21 following hearing(s):

22 Oral Argument on Appeal of August 28th, 2012.

23

24 Dated this 29th day of November, 2012.

25

26 _____
27 Keith M. Evans, RPR, CSR NO. 655

K & K REPORTING (208)743-1380 kkreport@wildblue.net

Case No. CU2011-500
 Filed 12/5/12
 at 2:53 o'clock P M ✓
Carrie Bird
 By BD Clerk
 Deputy

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

EDWARD L. SHINN and DONILEE E.
 SHINN, husband and wife

Petitioner-Appellant,

V.

BOARD OF COUNTY COMMISSIONERS
 OF CLEARWATER COUNTY, IDAHO

Respondent-Respondent.

SUPREME COURT NO. 40436

CLERK'S CERTIFICATE
 OF EXHIBITS

I, Barbie Deyo, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Orofino, Idaho this 5th day of December, 2012.

CARRIE BIRD
 Clerk of the District Court

BY: Barbie Deyo
 Deputy Clerk



Case No. 02011-500
Filed 12/5/12
at 2:53 o'clock P M ✓
Carrie Bird
By SP Clerk
Deputy

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

EDWARD L. SHINN and DONILEE E.)
SHINN, husband and wife)
)
Plaintiffs-Appellants,) SUPREME COURT NO. 40436
)
v.) CERTIFICATE TO RECORD
)
BOARD OF COUNTY COMMISSIONERS)
OF CLEARWATER COUNTY, IDAHO)
)
Defendants-Respondents.)
)

I, Barbie Deyo, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, do hereby certify that the above foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 18th day of October ~~December~~, 2012.

CARRIE BIRD, Clerk

By Barbie Deyo
Deputy Clerk

CERTIFICATE TO RECORD

Case No. W11-500
Filed 12/5/12
at 2:53 o'clock P M
Carrie Bird

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

EDWARD L. SHINN and DONILEE E.)
SHINN, husband and wife)

Plaintiffs-Appellants,)

V.)

BOARD OF COUNTY COMMISSIONERS)
OF CLEARWATER COUNTY, IDAHO)

Defendants-Respondents.)

SUPREME COURT NO. 40436

CERTIFICATE OF SERVICE

I, Barbie Deyo, Deputy Clerk of the District Court of the
Second Judicial District of the State of Idaho, in and for the
County of Clearwater, do hereby certify that copies of the
Clerk's Record and Transcript Of An Oral Argument On August 28,
2012 were placed in the United States mail and addressed to Karin
Seubert, Jones, Brower and Callery, P.L.L.C., P.O. Box 854,
Lewiston, Idaho 83501 and E. Clayne Tyler, Clearwater County
Prosecuting Attorney, P.O. Box 2040, Orofino, Idaho 83544 5th day
of December, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
the seal of the said Court this 5th day of December, 2012

CARRIE BIRD, Clerk

By

Barbie Deyo
Deputy

